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## WIPO ARBITRATION AND MEDIATION CENTER

### PALEXPO TRADE FAIRS – FAST-TRACK INTELLECTUAL PROPERTY DISPUTE RESOLUTION PROCEDURE

#### ABBREVIATED EXPRESSIONS

##### **Article 1**

In these Rules:

“Fast-Track Procedure” means the fast-track intellectual property dispute resolution procedure available at the Palexpo fairground;

“Claimant” means the party initiating the Fast-Track Procedure; the Claimant must be an Exhibitor or a Non-exhibitor in accordance with the Fast-Track Procedure;

“Respondent” means the Exhibitor against which the procedure is initiated, as named in the Request for a Fast-Track Procedure;

“Exhibitor” means an entity exhibiting items at a trade fair organized at the premises of Palexpo;

“Non-exhibitor” means any third party who is not an Exhibitor;

“The organizer” means the organizer of trade fairs. The secretariat will be assumed by Palexpo, including the tasks defined in below articles, operating during the opening hours of trade fairs organized at the premises of Palexpo;

“Submission Agreement” means an agreement by a Non-exhibitor to submit to a Fast-Track Procedure all or certain claims against a Respondent that have arisen or that may arise between them during a trade fair organized by an organizer at Palexpo; the submission may be in the form of a declaration;

“Expert Panel” means the sole panelist;

“Chairperson” means the person available to assist the Center in the administration of the Fast-Track Procedure;

“WIPO” means the World Intellectual Property Organization;

“Center” means the WIPO Arbitration and Mediation Center.

Words used in the singular include the plural and vice versa, as the context may require.

## **SCOPE OF APPLICATION OF RULES**

### **Article 2**

- (a) In accordance with the Conditions for Participation provided by an organizer at Palexpo, disputes between Exhibitors as well as Exhibitors and Non-Exhibitors occurring during and at the premises of a trade fair shall be settled in accordance with these Rules, as in effect on the date of the commencement of the Fast-Track Procedure.
- (b) The scope of application of these Rules is limited to disputes relating to the alleged infringement of copyright, trademarks, design rights or breach of laws on unfair competition under Swiss law.
- (c) The scope of application of these Rules does not include disputes relating to the alleged infringement of patents.
- (d) Decisions rendered pursuant to Article 19 of these Rules shall be recognized as binding and enforceable with immediate effect during and at the premises of the trade fair.

### **Article 3**

These Rules shall govern the Fast-Track Procedure, except that, where any of these Rules is in conflict with a provision of Swiss law from which the parties cannot derogate, that provision shall prevail.

## **COMMENCEMENT OF THE FAST-TRACK PROCEDURE**

### **Filing a Request for a Fast-Track Procedure**

### **Article 4**

The Claimant shall file the Request with the Center and with the organizer for transmission to the Expert Panel. The Request shall be filed in writing or orally at the earliest the day before the beginning of the trade fair and at the latest by the end of opening hours of the next to last day of the trade fair. The **Model Request** shall be used for written Requests and for taking note of oral Requests.

### **Request**

### **Article 5**

The Request for a Fast-Track Procedure shall contain:

- (a) a demand that the dispute be referred to the Fast-Track Procedure under the Fast-Track Procedure Rules;
- (b) the names, addresses and telephone, e-mail or other communication references of the parties;
- (c) a statement of the facts and legal arguments supporting the claim, such as extracts from national or international registers proving the rights under Swiss law, and including a statement of the relief sought;
- (d) documentary evidence upon which the Claimant relies, such as photographs taken from the allegedly infringing items shown at the trade fair by Respondent; and
- (e) proof of payment of the fees mentioned in Article 25.

In case the Request is filed by a Non-exhibitor, the Request shall also contain the signed **Model Submission Agreement**.

## **Answer to the Request**

### **Article 6**

- (a) Upon receipt of the Request, the Expert Panel shall inform the Respondent at the inspection of Respondent's stand, as provided for in Article 7, of the introduction of the Fast-Track Procedure against it.
- (b) The Respondent shall be presented the Claimant's Request and it shall be given the opportunity to provide an Answer to the Request including arguments in defense of any of the elements in the Request. For this purpose the Respondent shall use the **Model Answer to the Request**.
- (c) The Answer to the Request shall contain:
  - i. the names, addresses and telephone, e-mail or other communication references of the Respondent;
  - ii. a statement of the facts and legal arguments supporting the Answer to the Request, such as extracts from national or international registers proving the rights under Swiss law and documentary evidence.
- (d) The Respondent shall provide the Expert Panel with its Answer to the Request within two [2] business hours of the trade fair following receipt of the information about the Request.

## **Inspection of Respondent's Stand**

### **Article 7**

- (a) For the purposes of Article 6 lit. (a) and lit. (b), and in order to obtain additional information, the Expert Panel may inspect the Respondent's stand and may order the Respondent, or the person present at the Respondent's stand, to make available all items for inspection.
- (b) The Expert Panel may collect evidence by, *inter alia*, taking photographs of the exhibition samples, and by collecting such samples.
- (c) The Expert Panel may order the Claimant to be present during the inspection of the Respondent's stand and available for questions and clarifications.
- (d) A written record including the parties' statements may be prepared by the Expert Panel and signed by the Claimant and the Respondent.

## **Provisional Removal of Items**

### **Article 8**

The Expert Panel may decide whether, after the inspection, the Respondent shall remove the disputed items until it issues its final decision. If the Respondent refuses to remove such items, the Expert Panel may request the organizer to obtain compulsory removal of the contested items.

## **Representation**

### **Article 9**

The parties may be represented by persons of their choice, irrespective of, in particular, nationality or professional qualification. The parties shall communicate the names, addresses and telephone, e-mail or other communication references of any representative to the Expert Panel.

## **COMPOSITION AND ESTABLISHMENT OF THE EXPERT PANEL**

### **List of Candidates**

#### **Article 10**

- (a) The Center shall invite candidates to act as Expert Panel for disputes under these Rules. The Expert Panel shall be composed of a lawyer qualified under Swiss law with experience in intellectual property matters.
- (b) The Center shall maintain a list of candidates together with a statement of each candidate's qualifications and experience.
- (c) Before the commencement of a specific trade fair the candidates for the appointment shall communicate to the organizer and the Center their availability to conduct and complete the procedure within the periods of time referred to in these Rules.

### **Appointment of the Expert Panel**

#### **Article 11**

A candidate for appointment will be requested to act as Expert Panel in accordance with a rotational system under which the next candidate on the list shall be appointed if the previous candidate on the list cannot act as Expert Panel.

### **Impartiality and Independence**

#### **Article 12**

- (a) The Expert Panel shall be impartial and independent.
- (b) The prospective Expert Panel shall, before accepting appointment in a specific case, disclose to the Center and the organizer any circumstances that might give rise to justifiable doubt as to its impartiality or independence, or confirm in writing that no such circumstances exist.

### **Acceptance**

#### **Article 13**

The candidates shall communicate their acceptance to act as Expert Panel in a specific case in writing to the Center and the organizer. For this purpose the candidates shall use the **Model Statement of Acceptance and Declaration of Impartiality and Independence**.

### **Replacement of Expert Panel**

#### **Article 14**

- (a) If the Expert Panel discloses to the Center and the organizer, at any stage during the Fast-Track Procedure, circumstances that might give rise to justifiable doubt as to its impartiality or independence, the Expert Panel shall immediately be released from appointment.
- (b) Whenever necessary, the next candidate on the list shall be appointed in accordance with Article 11 immediately after the release of the initial Expert Panel.
- (c) Whenever another candidate is appointed, it shall, having regard to any observations of the parties, determine in its sole discretion whether all or parts of any prior part of the Fast-Track Procedure are to be repeated.

## **CONDUCT OF THE FAST-TRACK PROCEDURE**

### **General Powers of the Expert Panel**

#### **Article 15**

- (a) Subject to Articles 3 and 13, the Expert Panel may conduct the Fast-Track Procedure in such manner as it considers appropriate.
- (b) In all cases, the Expert Panel shall ensure that the parties are treated with equality and that each party is given an adequate opportunity to present its case.
- (c) The Expert Panel shall ensure that the Fast-Track Procedure takes place with due expedition.
- (d) The Expert Panel may refuse admission of complex cases, in particular such involving complex technical matters, and refer the parties to the state courts.

### **Language of Proceedings**

#### **Article 16**

Unless otherwise agreed by the parties, the language of the proceedings shall be English or French. Subject to the Expert Panel's approval, parties may use both languages in the Fast-Track Procedure.

### **Default**

#### **Article 17**

- (a) The Expert Panel may proceed with the Fast-Track Procedure and make the decision if the Respondent, without showing good cause, fails to avail itself of the opportunity to present its case in accordance with Article 6.
- (b) If a party, without showing good cause, fails to comply with any provision of, or requirement under, these Rules or any direction given by the Expert Panel, the Expert Panel may draw the inferences therefrom that it considers appropriate.

### **Chairperson**

#### **Article 18**

- (a) The Center will appoint the Chairperson for a one-year period.
- (b) The Center and the Expert Panel may consult with the Chairperson on specific issues raised by the Center or the Expert Panel. The opinion of the Chairperson shall be subject to the Expert Panel's power of assessment in the context of all the circumstances of the case. When contacted by the Center or the Expert Panel, the Chairperson shall disclose to them and to the organizer any circumstances that may affect its impartiality or independence in a specific case.

## **DECISIONS**

### **Decisions**

#### **Article 19**

- (a) The Expert Panel may make any decision that it considers urgently necessary to preserve the rights of the parties during and at the premises of the trade fair.
- (b) The Expert Panel may make its decisions subject to such conditions it considers appropriate. In particular, the Expert Panel may require that a party in whose favor a decision is made provides adequate security during the trade fair.
- (c) In particular, the Expert Panel may order closure of a stand, removal of the disputed items from a stand, stop of sales of the disputed items and performance of other legal obligations by a party during the trade fair.

### **Form and Notification of Decisions**

#### **Article 20**

- (a) The Expert Panel shall make a decision in writing and shall state the reasons on which it is based.
- (b) The decision shall be signed by the Expert Panel.
- (c) The decision shall be notified by the Expert Panel to the parties, the organizer and the Center in a number of originals sufficient to provide one for each party the organizer and the Center.

### **Laws Applicable to the Substance of the Dispute**

#### **Article 21**

The Expert Panel shall decide the substance of the dispute in accordance with Swiss law, including the Swiss Private International Law Act.

### **Time Period for Delivery of the Decision**

#### **Article 22**

- (a) The Expert Panel shall make the decision and notify it in the shortest time possible and, in any case, within 24 hours of the receipt of the Request.
- (b) At the request of the Expert Panel or on its own initiative, the Center may, in exceptional circumstances, extend the time limit set out in lit. (a) of this Article.

### **Effect of Decision**

#### **Article 23**

- (a) By agreeing to these Rules, the parties undertake to carry out the decision without delay.
- (b) If the Respondent refuses to comply with the Expert Panel's decision or an executed cease and desist declaration, the Expert Panel may request the organizer to enforce the decision immediately during the trade fair. The Expert Panel may also recommend to the organizer not to admit the Respondent at future trade fairs.

## **Settlement**

### **Article 24**

- (a) The Expert Panel may suggest that the parties explore settlement at such times as the Expert Panel may deem appropriate.
- (b) If, before the decision is made, the parties agree on a settlement of the dispute, the Expert Panel shall terminate the Fast-Track Procedure and, if requested jointly by the parties, record the settlement in the form of a consent decision. The Expert Panel shall not be obliged to give reasons for such a decision.
- (c) The consent decision shall be made and notified in accordance with Article 20.

## **Fees and Costs**

### **Article 25**

- (a) The Request shall be subject to the payment to Palexpo of a fixed fee by the Claimant in the amount of CHF 3,500 in order to cover the costs of the Fast-Track Procedure including the Expert Panel's fees (CHF 2,000) and the administrative fees of Palexpo (CHF 500), the Center (CHF 500) and the Chairperson (CHF 500).
- (b) No action shall be taken by the Center, the organizer or the Expert Panel until the CHF 3,500 fixed fee has been paid.
- (c) In case of a decision in favor of the Claimant, the Claimant shall be entitled to request refund of the fees from the Respondent.
- (d) In case of a decision in favor of the Respondent, the Claimant shall bear the costs of the procedure referred to in lit. (a) of this Article.
- (e) The Respondent, after being informed about the introduction of the Fast-Track Procedure against it pursuant to Article 6, may sign a cease and desist declaration, within one hour after this notification. For this purpose the Respondent shall use the **Model Cease and Desist Declaration**.
- (f) If the Respondent signs a cease and desist declaration pursuant to lit. (e) of this Article, it shall pay the amount of CHF 1,000 to the Claimant. The Claimant will also receive a refund of CHF 2,500 of the fee paid pursuant to lit. (a) of this Article. The remaining fees (CHF 1,000) will be used in equal shares towards the administrative fees mentioned in lit. (a) of this Article.
- (g) The Expert Panel may apportion the costs of the Fast-Track Procedure between the parties in light of all the circumstances of the case and the outcome of the procedure, and in particular in case of settlement of the dispute in accordance with Article 24.

## **Appeal**

### **Article 26**

- (a) Each party may appeal the Expert Panel's decision in a WIPO Expedited Arbitration within 30 days after the Expert Panel's decision has been communicated to the parties.
- (b) The party which intends to commence a WIPO Expedited Arbitration shall send a written notification to the Center of its intention to file a Request for Arbitration against the other party. Upon receipt of this notification, the Center will request the parties to sign an Arbitration Agreement.

## **MISCELLANEOUS**

### **Confidentiality**

#### **Article 27**

The Expert Panel, the organizer, the Chairperson, the Center and the parties shall maintain the confidentiality of information, submissions and evidence to the extent that they describe information that is not in the public domain, except to the extent necessary in connection with the appeal procedure.

### **Exclusion of Liability**

#### **Article 28**

Except in respect of deliberate wrongdoing, the Expert Panel, the organizer, the Chairperson and the Center shall not be liable to a party for any act or omission in connection with the Fast-Track Procedure.