Protective Orders in International Arbitration

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1. Introduction

This article is focussed on production/discovery of documents and other material in international arbitration and the mechanisms available to the parties and the Tribunal to preserve the confidentiality of such documents and other information necessarily disclosed in the arbitral process. This will typically arise where the dispute involves high technology subject matter, for example, in disputes involving research and development agreements, technology transfer Agreements, patent licenses and the like.

2. The Confidentiality of Arbitration Proceedings

While not within the strict remit of this article, the issue of confidentiality of the arbitral process is, first, briefly addressed to put into context maintenance of confidentiality of material arising in the arbitration itself. Proponents of litigating international disputes through arbitration rather than in national courts commonly cite a major advantage of arbitration as being the confidentiality and privacy of the process. Privacy, in the sense that only the parties are involved in the process (e.g. in making submissions and participating in the hearing), is generally recognised in national arbitration statutes and international rules.

By contrast, the extent to which the parties to international arbitration agreements are subject to an implied obligation to maintain confidentiality is less settled. As Gary Born notes in his excellent book, International Commercial Arbitration, 2nd Ed. Kluwer (2014), both the UNCITRAL Model Law and most national arbitration legislation are silent on issues of confidentiality. However, that said, national courts will generally not override agreement by the parties to maintain the confidentiality of arbitral proceedings. In that respect, the parties are, of course, able to provide in the agreement to arbitrate that materials prepared for or used in the arbitration shall be maintained in confidence. Further, many Institutional Rules impose general confidentiality obligations. For example, the WIPO Arbitration Rules

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and Expedited Arbitration Rules (2014) offer a comprehensive and balanced treatment of all aspects of confidentiality, including the existence of the arbitration as such (Article 75 (68) WIPO (Expedited) Arbitration Rules), any disclosures made during the arbitration (Article 76 (69) WIPO (Expedited) Arbitration Rules), and the award (Article 77 (70) WIPO (Expedited) Arbitration Rules). The confidentiality provisions of the WIPO Rules are binding on the parties by virtue of the arbitration agreement, on the arbitrator by virtue of his or her appointment under those Rules, and on the Center as designated administering authority (Article 78 (71) of the WIPO (Expedited) Arbitration Rules). The Center and the arbitrators may disclose the existence of the arbitration, any disclosures made during the arbitration, and the award only with the consent of the parties, and to the extent disclosure is necessary in connection with a court action relating to the award, or if disclosure is otherwise required by law. Third parties, such as witnesses, experts, or the confidentiality advisor provided for in Article 54 (48) of the WIPO (Expedited) Arbitration Rules, will have to sign a separate confidentiality undertaking.

Another example is Article 44(1) of the Swiss International Arbitration Rules (2012) which provides the following:

"Unless the parties expressly agree in writing to the contrary, the parties undertake to keep confidential all awards and orders as well as all materials submitted by another party in the framework of the arbitral proceedings not already in the public domain, except and to the extent that disclosure may be required of a party by a legal duty, to protect or pursue a legal right, or to enforce or challenge an award in legal proceedings before a judicial authority. This undertaking also applies to the arbitrators, the Tribunal- appointed experts, the secretary of the Tribunal, the members of the Board of Directors of the Swiss Chambers' Arbitration Institution, the members of the Court and the Secretariat, and the staff of the individual chambers."

Other Institutional Rules contain similar confidentiality provisions with varying levels of detail and comprehensiveness, for example, Article 37 ICDR Arbitration Rules; Article 30 LCIA Arbitration Rules, Article 42 of the Hong Kong International Arbitration Centre Arbitration Rules; Article 35 (1) – (3) Arbitration Rules of the Singapore International Arbitration Centre; and Article 46 of the Stockholm Chamber of Commerce. Noteworthy is the absence of confidentiality provisions in the arbitration rules of the International Chamber of Commerce.

Absent such provisions, the parties' obligations of confidentiality with respect to international arbitration proceedings are generally governed by the

law governing the arbitration agreement. It will be that law which defines the existence and scope of the related, and implied, obligations of confidentiality.

3. Disclosure in International Arbitration

3.1 The Powers of the Tribunal

While differing attitudes to disclosure/discovery of evidentiary materials remain between civil law and common law systems, there is an increasing consensus that some degree of disclosure may be appropriate in the arbitral process. The provision of such disclosure, as referring to tribunal-(or court-) ordered production of materials for use of substantiating party claims in arbitral proceedings, is governed by the parties' agreement to arbitrate and applicable institutional arbitration rules where specified in that agreement. Typically, the procedural law of the arbitration – usually, the law of the place/seat of the arbitration – will give effect to the parties' procedural autonomy in this respect.

Institutional Rules generally give the Tribunal discretion to conduct the arbitration as it considers appropriate and include provisions regarding disclosure. Where the parties have incorporated Institutional Rules in the agreement to arbitrate, such Rules will generally define the tribunal's powers in relation to ordering disclosure. Typically, the nature and extent of document production will be discussed at the preparatory conference which serves the purpose to organize and schedule subsequent proceedings. Related procedural mechanisms concerning discovery will also be settled at that preparatory conference. In addition to document production, these may include provisions covering site inspections, experiments, primers and models, and any other means of disclosure necessary to enable the parties to present their cases and to assist the tribunal.

Additionally, legislation applying at the place of arbitration can provide arbitrators with authority to summon witnesses, including non-parties to the arbitration, to provide evidence and to produce documents. Examples include section 7 of the U.S. Federal Arbitration Act, section 43 of the English Arbitration Act, 1996, the French Code of Civil Procedure Article 1467(3), and Article 1696(3) of the 1998 Belgian Judicial Code. By contrast, the subject of document disclosure is not addressed in many other jurisdictions and, as provided by Article 19(1) of the UNCITRAL Model Law, the subject of disclosure is left to the parties to determine under the general principles of party procedural autonomy:

"the parties are free to agree on the procedure to be followed by the Tribunal."

Alternatively, a number of civil law jurisdictions mirror Arts. 182-184 of the Swiss Law on Private International Law and provide that the Tribunal has authority over the procedural conduct of the arbitration and the power to seek from national courts judicial assistance in evidence taking.

In sum, national arbitration regimes generally provide Tribunals with wide power to direct the fact-finding process and that includes power to order the parties to produce documents and other materials. This is also consistent with the 2010 IBA Rules on the Taking of Evidence in International Arbitration, to which further reference is made below.

3.2 Institutional Rules on Production of Documents and Other Material

Detailed provisions on the production of documents and other materials are, for example, contained in the 2014 WIPO Rules. These confirm, generally, the Tribunal's discretion to conduct the arbitration in a manner as it considers appropriate, Article 37, (31)(a) WIPO (Expedited) Arbitration Rules, including the Tribunal's power to order document production, Article 50, (44)(b) WIPO (Expedited) Arbitration Rules:

"At any time during the arbitration, the Tribunal may, at the request of a party or on its own motion, order a party to produce such documents or other evidence as it considers necessary or appropriate and may order a party to make available to the Tribunal or to an expert appointed by it or to the other party any property in its possession or control for inspection or testing."

Further, the LCIA Rules, provide in Article 22.1 that the Tribunal shall have power, upon the application of a party or on its own initiative "to order any party to make any documents, goods, samples, property, site or thing under its control available for inspection by the Tribunal, any other party, any experts to such party and any expert to the Tribunal (Article 22.1 (iv)); and to order any party to produce to the Tribunal and to other parties documents or copies of documents in their possession, custody or power which the Tribunal decides to be relevant (Article 22.1(v))."

Similar provisions are contained in, for example, the 2014 Arbitration Rules of the ICDR, Articles 20.4 and 21.3 and 4; Article 22(3) of the 2013 HKIAC Rules; Article 24(3) of the Swiss International Rules; and Article 27(3) of the UNCITRAL Rules. Drafted with particular reference to disputes involving patents, other IPRs and high technology subject matter, the 2014 WIPO Rules contain detailed provisions relating to site visits (Article 52 (46)

WIPO (Expedited) Arbitration Rules), the admissibility of experimental evidence (Article 51 (45) WIPO (Expedited) Arbitration Rules), and the provision of agreed technical primers and models (Article 53 (47) WIPO (Expedited) Arbitration Rules).

3.3 Document Production under the IBA Rules on the Taking of Evidence in International Arbitration

Article 3 of the IBA Rules on the Taking of Evidence in International Arbitration (IBA Rules) provides a useful guide commonly used for the Procedural Order made at the Case preparatory conference. It includes provisions for:

- The production by a party of all documents upon which that party relies, Article 3.1.;
- A procedure for a Party Request for production of additional documents, describing the category of documents sought, explaining why such documents are relevant to the case, and why the Requesting Party believes that such documents are in the possession, custody or control of the other Party, Article 3.2 and 3.3;
- A procedure for the Party to whom the Request is addressed to object to the production of such documents, and, in default of agreement between the Parties, for the Tribunal to rule on whether, to what extent and upon what terms (e.g. as to confidentiality) the Request should be granted: Article 3.4 to 3.8;
- A procedure for requesting the Tribunal to take what steps may be available to obtain documents from a non-party to the arbitration, Article 3.9;
- A procedure for the Tribunal to request either party to produce documents and, if necessary, to obtain such documents from any person or organisation, Article 3.10; and
- Provisions that documents produced by a party, or a non-party, shall be used only for the purposes of the arbitration and that documents not in the public domain shall be kept confidential: Article 3.13.

3.4 Preservation of Confidentiality in Documents and Other Material Produced in the Arbitration

The confidentiality provision in Article 3.13 of the IBA Rules is, in fact, generally enshrined in most Institutional Rules. Such Institutional Rules commonly provide for the Tribunal to make orders (known as protective orders) where appropriate, to protect trade secrets and confidential information to avoid unnecessary damage on the parties. For example, pursuant to Article 54, (48)(c) of the WIPO (Expedited) Arbitration Rules, the Tribunal may determine whether information received is to be classified as confidential, whether the absence of special measures of protection in the proceedings would be likely to cause serious harm to the party invoking confidentiality, and under which conditions and to whom information may be disclosed. Provisions on measures to preserve confidential information may also be found in Article 22.3 of the 2012 ICC Arbitration Rules; Article 21.5 of the ICDR Rules; Article 30.1 of the LCIA Rules and Article 35.4 SIAC Rules.

In addition to non-public domain documents, such protective orders may, and in disputes involving intellectual property rights and high technology subject matter, commonly do apply to site visits to inspect the products and/or process(es) involved. For the protection of trade secrets in such plant and/or machinery, typically the protective order will limit inspection to counsel and experts of the requesting a party. Where, in place of ordering a site visit, the Tribunal in the first place orders the party to whom the request is addressed to produce a product and/or process description, restricted access to such description is also typically set out in a protective order. Similar confidentiality provisions in a protective order may be appropriate where experimental evidence is involved. In that respect, Article 51 (45) of the WIPO (Expedited) Arbitration Rules sets out conditions for the admissibility of such evidence, which include the provision of a notice of experiments and the entitlement of the other party to request a repetition of the experiment(s) in its presence. Again, in such circumstances, it may be appropriate to restrict by means of a protective order the categories of persons having access to the notice of experiments and any repetition.

3.5 Requesting a Protective Order

Again, of all the Institutional Rules, perhaps the WIPO (Expedited) Arbitration Rules contain the most explicit regime in this respect. This is to be expected since those Rules were crafted to be appropriate for the typically high technology subject matter for which WIPO arbitration is particularly suited. For example, absent consent by the parties to disclose documents

and/or other material under the terms of a protective order, Article 54 (48)(b) WIPO (Expedited) Arbitration Rules sets out the procedure whereunder a party requesting the protective order can make application to the Tribunal and the matters the Tribunal shall consider when determining such application. In exceptional cases, Article 54 (48)(d) and (e) WIPO (Expedited) Arbitration Rules empowers the Tribunal to designate a confidentiality advisor to decide the application and, where appropriate, the terms of the protective order.

4. The Form of the Protective Order

In the absence of a standard form of protective orders, it is in the first place for the parties themselves to seek to agree appropriate terms. Such terms will, naturally, vary to fit the particular circumstances of each case. As noted, it is only where the parties cannot agree that the Tribunal will resolve appropriate terms.

Set out below is an anonymised protective order taken from a WIPO arbitration involving trade secret documents and information arising in a dispute relating to a Patent and Know-How License Agreement. It generally follows the structure of a form of protective order commonly used in litigation before U.S. District Courts and is probably more detailed than the form more usually seen where the place of arbitration is outside the United States of America. Nevertheless, it will, hopefully, provide a useful guide for practitioners and arbitrators alike faced with drafting a protective order, particularly in high technology disputes.

David PERKINS, *Protective Orders in International Arbitration*

Summary

This article focuses on Protective Orders in international arbitration where the dispute involves intellectual property rights and high technology subject matter and requires a specific confidentiality regime. Such disputes commonly arise from Technology Transfer Agreements, Research & Development Agreements, and Patent & Know-How Licenses.

The subject matter in such disputes will, typically, involve not only disclosure of technically sensitive confidential documents, but also Product and/or Process Descriptions and site visits. Where, as is often the case, the parties compete in the same technical sector, mechanisms are required to find a balance between adequately protecting party confidentiality in such subject matter, while also providing sufficient disclosure to the counterparty, experts and the Arbitral Tribunal to facilitate the arbitral process.

This article outlines the Institutional Rules which provide the necessary mechanisms to achieve that balance and contains a sample Protective Order which may serve as a useful guide to those faced with resolving a procedural issue of this nature. It also focuses particularly on the WIPO Rules, which have been crafted specifically for disputes involving Intellectual Property Rights and other high technology subject matter.

World Intellectual Property Organization Arbitration and Mediation Center

In re Arbitration of:	
ABC	
	ARBITRATION – EXPEDITED
Claimant	WIPO Case no: [.....]
vs	
XYZ	
Respondent	

Stipulated Protective Order Against Unauthorized Use or Disclosure of Confidential Information

It is hereby ORDERED that the terms and conditions of this Protective Order Against Unauthorized Use or Disclosure of Confidential Information (hereinafter referred to as the "Protective Order") shall be applicable to and govern documents and tangible things produced in response to requests for production thereof, Process Descriptions, and all other discovery taken in this arbitration proceeding (hereinafter referred to as "Discovery Material"), as well as testimony adduced at the hearing, matters in evidence, and other information exchanged by the parties in the captioned action (hereafter referred to as "this action") which the disclosing party designates as confidential hereunder.

It is further ORDERED as follows:

1. Designation of Confidential Materials

A. Any party to or third party witness in this action (hereafter referred to as a "designating party") shall have the right to designate as "CONFIDENTIAL" any information or thing it believes in good faith constitutes or embodies matter containing or reflecting trade secrets, non-public research or other similar non-public information, confidential or proprietary information, information covered by a legitimate privacy right or interest.

"CONFIDENTIAL" materials and information shall not include any information which:

(i) at the time of the disclosure hereunder is available to the public;

(ii) after disclosure hereunder become available to the public through no act, or failure to act, by the receiving party; or

(iii) the receiving party can show (a) was already known to the receiving party; (b) was independently developed by the receiving party; or (c) was received by the receiving party, after the time of disclosure hereunder, from a third party having the right to make such disclosure.

Any information, document, thing, or deposition page designated "CONFIDENTIAL," copies thereof, information contained therein, and any summaries, charts or notes containing such confidential information shall be "CONFIDENTIAL."

B. Documents that any party wishes to protect against unauthorized disclosure or use shall be designated as "CONFIDENTIAL" by having stamped or affixed thereon the word "CONFIDENTIAL." Multi-paged Discovery Material that is bound together need only be designated CONFIDENTIAL on the first page. If the Discovery Material cannot be so labeled, it shall be designated CONFIDENTIAL in a manner to be agreed upon. In the event original documents or things are produced for initial inspection at a place agreed to by the parties, such documents or things may be produced for inspection by outside counsel for the receiving party before the documents or things are designated "CONFIDENTIAL." Prior to furnishing copies to the receiving party, the furnishing party shall have an opportunity to designate the documents as "CONFIDENTIAL" or not, pursuant to the provisions of this Protective Order. Any confidential designation that is inadvertently omitted during document production may be corrected by timely written notice to opposing counsel.

C. If inspection, measuring, testing, sampling or photographing of a party' s processes, products, equipment, premises or other property will reveal or disclose information that is confidential, the producing party shall advise the party or parties seeking the discovery in advance that the inspection, measuring, testing, sampling or photographing will be permitted only on a confidential basis and that material discovered and the information derived from that material shall be treated as

"CONFIDENTIAL." If photographing or taping of premises, products, equipment, processes or other property is made, the pictures or tapes shall bear the appropriate legend in accordance with this Protective Order on the photograph or videotape itself, and on any exterior packaging of same.

D. If at any time during this action of after its final adjudication, a party to this action or a third party wishes to contest the designating party' s claim of confidentiality, that party may move this Tribunal for such determination (see paragraph 4). In the resolution of such motion, the moving party shall have the obligation to show a good-faith basis for contending that the information, documents or things are not confidential. Thereafter, the designating party that made the claim of confidentiality shall have the burden of establishing good cause for protecting the confidentiality of the information, documents or things.

2. Restriction on Disclosure of Designated Materials

A. No information or material designated "CONFIDENTIAL" shall be disclosed to any person or entity except as set forth in this Protective Order. No person shall use any material or information designated "CONFIDENTIAL" except for purposes of preparation and the hearing of this arbitration proceeding.

B. Subject to paragraphs 2(C) and 2(D), and any further order of this Tribunal, information and material designated as "CONFIDENTIAL" shall not be provided, shown, made available, or communicated in any way to any person or entity with the exception of:

(i) outside attorneys of record for each party (for Claimants, attorneys at the law firm of ***GHI***; for Respondents, attorneys at the law firm of ***JKL***), their partners, shareholders, and associates who are working on this action on behalf of any party, and the paralegal assistances, stenographic, and clerical employees working under the direct supervision of such attorneys;

(ii) independent experts and consultants who are expressly retained or sought to be retained by any attorney described in paragraph 2(B)(i) to assist in the preparation or hearing of this action with disclosure only to the extent necessary to perform such work. Independent experts or consultants, as used in this paragraph,

shall not include any regular employee or agent of the receiving party. "CONFIDENTIAL" material shall not be disclosed to any independent expert or consultant until that person has executed a written declaration in the form attached hereto as Exhibit A, acknowledging that he or she has read a copy of this Protective Order and agrees to be bound by its terms. Furthermore, no "CONFIDENTIAL" information shall be disclosed to any independent experts or consultants until at least ten (10) business days have lapsed following notice to counsel of the expected disclosure to the proposed experts or consultants as fully identified. If the designating party makes a written objection to the proposed independent expert or consultant within the ten day period, no disclosure of "CONFIDENTIAL" information may be made to the proposed independent expert or consultant pending an appropriate, further order of this Tribunal;

(iii) in-house counsel employed by the Respondent;

(iv) the WIPO Tribunal, including Sole Arbitrator [.....], or its staff in connection with this Tribunal' s administration and adjudication of this action;

(v) outside vendors who perform microfiching, photocopying, computer classification, or similar clerical functions, but only for so long as necessary to perform those services; and

(vi) any other individuals who are mutually agreed upon in writing by the parties hereto (as provided for in 2(D)), or who are approved by this Tribunal upon motion by either party.

C. The designation of any document as "CONFIDENTIAL" shall not preclude any party from showing the document to any person (a) who appears as the author or as an addressee on the face of the document and is not otherwise shown prior to such disclosure not to have received the document, (b) who has been identified by the designating party as having been provided with the document or with the information therein, or (c) who participated in any meeting or communication to which the document refers. Nothing contained in this Protective Order shall affect the right of the producing party to disclose or use for any purpose the documents or information produced and/or designated by it as "CONFIDENTIAL".

D. Prior to any disclosure of material or information designated "CONFIDENTIAL" to any person(s) other than as provided in paragraphs 2(B) and 2(C) above, counsel desiring to make such

a disclosure shall provide written notice to counsel for the designating party of its intent to make the disclosure, stating therein the specific material to be disclosed at least seven (7) days before any "CONFIDENTIAL" material is made available to such person(s) along with an explanation of the background of such person(s) (including each person' s place of employment, title, and job description) sufficient to allow the opposing party to determine if disclosure will injure the producing party. "CONFIDENTIAL" material shall not be disclosed to any such person(s) until such person(s) has executed a written declaration in the form attached hereto as Exhibit "A", acknowledging that he or she has read a copy of this Protective Order and agrees to be bound by its terms. Each party reserves the right to object to the disclosure of "CONFIDENTIAL" information to any such person, and such objection shall be communicated in writing to the proponent within seven (7) business days following the receipt of the name of the person in question. If the parties cannot resolve the issue, the party seeking disclosure may thereupon seek an appropriate order from this Tribunal compelling disclosure of "CONFIDENTIAL" materials. The seven (7) day period shall run from the date that the designating party receives such notice.

E. Any attorney who receives access to the opposing party's confidential information related to product design, development, testing, manufacturing or research, and which is designated as "CONFIDENTIAL" shall refrain for a period of two (2) years from the final disposition of this action, whether by judgment (including exhaustion of all appeals), settlement or otherwise from prosecuting, supervising or assisting in the prosecution of patent applications related in any way to [.....] technology. Nothing in this provision shall limit the right of a designating party' s attorney from prosecuting, supervising or assisting in the prosecution of patent applications related in any way to [.....] technology if that attorney only reviews his client' s information designated as "CONFIDENTIAL" and receives no information designated by the opposing party as "CONFIDENTIAL".

F. In the event that any "CONFIDENTIAL" material or information is used in any proceeding in connection with this arbitration, it shall not lose its "CONFIDENTIAL" status through such use, and the parties shall take all steps reasonably required to protect its confidentiality during such use.

3. Filing Designated Materials

Only if it is necessary to do so for the purpose of the hearing or a written submission to this Tribunal, documents and other matter ultimately filed with this Tribunal, including, *inter alia,* exhibits, physical evidence, Process Descriptions, briefs, and memoranda, which comprise, excerpt, reproduce, paraphrase, or contain designated "CONFIDENTIAL" material, or information taken therefrom, shall be filed with and kept by this Tribunal in sealed envelopes or other appropriately sealed containers on which shall be endorsed the caption of this action, an indication of the nature of the contents of the sealed envelope or container, the identity of the party filing the materials, the phrase "CONFIDENTIAL", the statement "SUBJECT TO PROTECTIVE ORDER", and a statement substantially in the following form:

> This envelope (container) contains documents (things) subject to the Protective Order entered in this action. It is not to be opened nor the contents thereof display, revealed, or made public, except by written order of this Tribunal.

No such sealed envelope or container shall be provided to any party or person except upon further written order of this Tribunal. Any such order shall specifically identify by name and address the person(s) who may have access to the sealed file and shall specifically designate the portion(s) of the sealed file to which such person(s) may have access and the restrictions upon his or her use or disclosure of such materials.

4. Cancellation of Designation

The receiving party may request the designating party to redesignate "CONFIDENTIAL" material. Such request shall be by written notice to counsel for the designating party. The written notice shall particularly identify the subject matter or document designated "CONFIDENTIAL" that the receiving party seeks to have redesignated. The parties shall work together in good faith to resolve all redesignation requests on an informal basis. If the dispute cannot be resolved informally within three (3) business days, a motion for further disclosure or reclassification may be filed with this Tribunal. Pending this Tribunal's determination of any motion contesting a confidential designation, the material shall be deemed "CONFIDENTIAL", as indicated by the designating party. Thereafter, such material shall be treated in accordance with this Tribunal's order. The three (3) day period shall run from the date that the designating party receives such notice.

5. Notice

All notices required by this Protective Order are to be served via facsimile with confirmation by regular mail to the appropriate attorney(s) at ***GHI*** and ***JKL***. The date by which a party receiving a notice shall respond, or otherwise take action, shall be computed from the date indicating that the facsimile was received. Any of the notice requirements herein may be waived in whole or in part, but only in writing signed by an attorney for the designating party.

6. Disposition of Designated Materials at Termination of the Case

A. Termination of proceedings shall not relieve any person from the obligations of this Protective Order, unless this Tribunal orders otherwise.

B. With respect to any documents marked "CONFIDENTIAL" that have been filed with this Tribunal, after final resolution of this arbitration proceeding including appeals, or resolution through settlement, unless otherwise agreed to in writing by an attorney of record for the designating party, this Tribunal will destroy any documents marked "CONFIDENTIAL" pursuant to this Protective Order, including all copies or summaries of or excerpts from such confidential documents which may have been made.

C. With respect to any documents marked "CONFIDENTIAL" that have not been filed with this Tribunal, within forty-five (45) days after the final resolution of this arbitration proceeding including appeals, or resolution through settlement, unless otherwise agreed to in writing by an attorney of record for the designating party, each party shall either (a) assemble and return all confidential material, including all copies thereof, to the party or person from whom the confidential material was obtained; or (b) certify in writing that all such material has been destroyed, except that counsel for the parties may retain copies of filing made to this Tribunal quoting confidential information, providing that such documents will be held for their internal use only, subject to the continuing ob ligations imposed by this Protective Order. A party need not destroy or discard documents which it designated as "CONFIDENTIAL".

7. Amendments and Exceptions by Order of this Tribunal

This Protective Order may be changed by further order of this Tribunal, and is without prejudice to the rights of a party to move for relief from any of its provisions, or to seek or agree to different or additional protection for any particular material or information.

8. General Provisions

A. "CONFIDENTIAL" materials and information shall be held in confidence by each person to whom it is disclosed, shall be used by the receiving party only for purposes of either this action and no other purpose, shall specifically not be used for any business purpose, and shall not be disclosed to any person who is not entitled to receive such information under this Protective Order. All "CONFIDENTIAL" information shall be carefully maintained so as to preclude access by persons who are not entitled to receive such information.

B. The designation of "CONFIDENTIAL" material or information pursuant to this Protective Order shall not be construed as a concession by either party that such information is relevant or material to any issues or is otherwise discoverable.

C. If a party through inadvertence produces or provides discovery which it believes is subject to a claim of attorney-client privilege or work product immunity, the producing party may give written notice to the receiving party or parties that the document or thing is subject to a claim of attorney-client privilege or work product immunity and request that the document or thing be returned to the producing party. The receiving party or parties shall return to the producing party such document or thing.

D. If a party through inadvertence produces or provides discovery of any confidential material without labeling, marking or designating it as "CONFIDENTIAL", the producing party may give written notice to the receiving party or parties that the document, thing, or other discovery information, response or testimony is "CONFIDENTIAL" and should be treated in accordance with the provisions of this Protective Order. The receiving party or parties must treat such documents, things, information, responses and testimonies as "CONFIDENTIAL" from the date such notice is received. Disclosure of such documents, things, information, responses and testimony prior to

receipt of such notice to persons not authorized to receive confidential material shall not be deemed a violation of this Protective Order; however, those persons to whom disclosure was made are to be advised that the material disclosed is "CONFIDENTIAL" and must be treated in accordance with this Protective Order.

E. This Protective Order shall survive the final adjudication of this arbitration proceeding (including any appellate proceedings), to the extent information or material designated "CONFIDENTIAL" remains "CONFIDENTIAL".

F. The parties submit themselves to the jurisdiction of the United States District Court for the District of XXX and this Tribunal for the purpose of enforcing the terms of this Protective Order.

Agreed to By the Parties:

_____	_____
Name:	Name:
Date:	Date:
Counsel for the Respondent	Counsel for the Claimant
XYZ	***ABC***

So Entered,

Date:_____ _____

[.....], Sole Arbitrator

World Intellectual Property Organization Arbitration and Mediation Center

In re Arbitration of:	
ABC	
and	
DEF	ARBITRATION - EXPEDITED
Claimants	WIPO Case no: [.....]
vs	
XYZ	
Respondent	

Declaration of _____ under Protective Order against Unauthorized Use or Disclosure of Confidential Information

I, _____,
declare as follows:

1. My business address is

   _____

2. My present employer is

   _____

3. My present occupation or job description is

_____

4. [For all experts and consultants only] Except as retained by _____ in connection with the above-referenced action, I am currently not employed by any party to this lawsuit or engaged as an independent contractor or consultant by any party to this lawsuit, either directly or indirectly.

5. I hereby acknowledge that any information or material designated as "CONFIDENTIAL", that I receive in the above lawsuit is provided to me pursuant to the terms and restrictions of the STIPULATED PROTECTIVE ORDER AGAINST UNAUTHORIZED USE OR DISCLOSURE OR, CONFIDENTIAL INFORMATION dated _____ (the Protective Order).

6. I have read the Protective Order, and agree to comply with and be bound by each of the applicable terms.

7. I hereby submit myself to the jurisdiction of the [.....] and this Tribunal for the purpose of assuring my compliance with the Protective Order.

8. I understand that I am to retain all of the materials that I receive which have been designated as "CONFIDENTIAL" in a manner consistent with this Protective Order no later than thirty (30) days after final resolution of this arbitration proceeding, including any and all appeals, or resolution through settlement, I agree to return to the counsel of record who provided me with such materials all information and documents designated as "CONFIDENTIAL", including all copies, extracts, and summaries thereof (and including those I prepared), or I will certify in writing that all such materials have been destroyed. Such return or destruction shall not relieve me from any of the continuing obligations imposed upon me by the Protective order.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: _____

_____