INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

 ISSN: 2582-6433

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 ISSN: 2582-6433

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 ISSN: 2582-6433

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 ISSN: 2582-6433

A CRITICAL STUDY ON THE EFFICACY OF SETTLING THE PATENT DISPUTE IN ARBITRATION

AUTHORED BY - HEERA H

ABSTRACT

Intellectual property arbitration can be defined as an arbitral procedure in which at least one intellectual property right' is in issue. Intellectual property is the source of many of the most dynamic world enterprises. Entering into a contract containing a carefully crafted arbitration clause provides a level of predictability with respect to the investment and liability associated with patent license and/or research agreements, thereby providing the respective companies a better estimation of the risk factors associated therewith. Specifically, when parties enter into an agreement to arbitrate they have the opportunity to obtain assurance through the careful drafting of the arbitration clause that any dispute arising out of the contract will be decided by a technologically knowledgeable neutral arbitrator in a manner that will be relatively inexpensive. Having this assurance can provide stability of the business relationship which is further strengthened by the knowledge that the proceedings will be confidential and the awards rendered will be final and non-appealable, so that the companies can quickly resume with their business transactions without concern for negative publicity or the uncertainty of appeals. Accordingly, using arbitration as a means to quickly and effectively settle patent disputes, not only can be beneficial for both parties should a dispute arise, but can also provide pre-emptive benefits that remain even if the agreement to arbitrate is never enforced. This research examines the arbitrability of patent validity disputes from a public policy viewpoint. The question is whether, or to what extent, the subject matter of patent validity disputes may be settled by international commercial arbitration and it also examines the advantages of arbitrability of patent disputes. The high cost of patent litigation, which is sometimes necessary to enforce a patentee's rights, is frequently cited as a deterrent to the use of the patent system. This is especially true for small businesses and independent inventors. Patent practitioners have long been concerned about the ever-growing cost, complexity and commercial disruption which a protracted patent litigation entails.

Keywords:

Patent Arbitration, Arbitrability, Validity, Infringement, Patent litigation.

 ISSN: 2582-6433

CHAPTER-I

1.1 INTRODUCTION

Intellectual Property Arbitration refers to methods of resolving IP disputes without having to start court proceedings. IP disputes are resolved in aid of expert opinions. Increasingly, arbitration is chosen as a means of objective, amicable and final adjudication of commercial disputes. Thus, the emergence of arbitration of intellectual property matters is a study which merits serious consideration. Arbitration is a process of dispute resolution wherein parties submit their dispute to at least one impartial "judge" who will render a binding decision. This process differs from mediation or conciliation, where the impartial authority is authorized only to facilitate the discussion of the parties in dispute, but will not render any decision on the matter. In arbitration, the parties agree that by submitting themselves to arbitration, the decision rendered by the arbitrator will be binding and is "non-appealable" absent any defense of invalidity of the arbitration clause. Disputes over patents customarily comprise three general matters of controversy. These are, first, the question of validity; second, the question of infringement that constitutes, with the first, the basis of practically all patent suits involving the technical questions of patent law; and, third, controversy which pertains to the question of enforcement of license agreements or other contracts made under the patents. Matters of validity and infringement of patents heretofore largely assumed has been narrow and based primarily on lack of knowledge and experience with the procedure, also the thought that only a court of law or equity is qualified to deal with litigation involving these questions. I have never believed that the objection stated was well founded, for courts of law and equity, as they were distinguished prior to the adoption of the new federal rules of civil procedure, are in reality laymen judges called in to determine the technical questions of infringement and validity of patents when these issues are raised in litigation. However, such judges do get considerable training in patent law in the more active territories of litigation of the country and become highly efficient administrators of such law. Patent litigation is of a special type, which probably involves expense exceeding that applicable to almost any other class of legal dispute. The cost of patent litigation is frequently a tremendous burden upon the litigating parties. It is so heavy in many instances that it is often infeasible for individual patent owners to undertake, and even corporations of considerable size have found the expense so great that they are very slow indeed to embark upon patent lawsuits that frequently run over a term of years before final adjudication or settlement.

 ISSN: 2582-6433

1.2 RESEARCH QUESTION

1. Whether the patent disputes are arbitrable under Internatioal Arbitration?
2. Whether the merits outweigh the demerits in resolving the patent disputes through arbitration?
3. Whether other jurisdiction permits just arbitration?

1.3 RESEARCH METHODOLOGY

This doctrinal research analyzes the effectiveness of resolving patent disputes through arbitration by examining legal frameworks, policies, and case studies. It includes a detailed review of the Arbitration Act and relevant amendments, interpreting key provisions in the context of patent disputes. Comparative analysis with international models like UNCITRAL, WIPO, and ICC helps identify best practices. The study uses both primary and secondary data, including interviews and reports, to evaluate practical implementation. It concludes with insights and policy recommendations to enhance the efficiency of patent arbitration mechanisms globally and in India.

1.4 LIMITATION AND SCOPE

The study primarily focusses on Statutory law and judicial interpretation from US, china, Singapore, England, which may not encompass other legal principles from other jurisdiction. The research relies on legal material published till 2024 Changes in legislation and judicial decision after this period are not considered. This research doesn't incorporate empirical data or quantitative analysis but relies only on theoretical framework of laws which may not be relied completely for practical application. The research is inherently influenced by the authors interpretation of statutes and precedents which may be subjective.

CHAPTER-II

PATENT ARBITRATION

2.1 PATENT ARBITRATION

Most modern countries have laws that mandate enforcement of arbitration awards made by proceedings that satisfy certain requirements. Thus, in these countries, specific issues that are stipulated in a valid arbitration agreement should be resolved by arbitration. Arbitrations should be established upon the mutual consent of the parties. Therefore, arbitration agreements usually are to be in writing, signed by both parties. A patent arbitration is a commercial arbitration to settle disputes involving substantive patent law. For patent disputes that merely

 ISSN: 2582-6433

concern rights or obligations derived from contracts such as patent assignment or licensing, the issues are generally accepted as the proper subject matter of arbitration all around the world.

2.2 ARBITRATION AGREEMENT

The arbitration agreement was incorporated within a patent license arrangement, where the patent holder served as the licensor. Members of a particular association could voluntarily accept the licensing terms, which included a binding arbitration clause[1]. The agreement established a three-member arbitration panel one arbitrator appointed by the patent owner, another by the alleged infringers (prospective licensees), and a third chosen by the first two an approach commonly used in arbitration frameworks[2].

The finalized panel consisted of a university professor knowledgeable in the technical domain of the patents, a patent lawyer selected by the licensees, and a retired U.S. Navy Rear Admiral, chosen by the other two, who served as the Board's Chairman. The agreement detailed the parties, identified the patents in dispute, and specified the licensing rights and obligations. It also provided for predetermined royalty rates, which were enforceable based on the arbitration outcome, with an option to halt payments if a patent was invalidated by a U.S. court[3].

The arbitration process focused on two core issues: first, the validity and scope of the patents, and second, whether the licensees' products constituted infringement. Hearings were scheduled accordingly. Licensees were required to submit relevant technical data, accessible to both the Board and the patent holder. The Board's decisions were final and binding, including future product designs, and the procedure followed New York's arbitration laws[4].

2.3 PRELIMINARY PROCEEDINGS

In comparing arbitration to traditional court litigation, the procedural efficiency of arbitration is particularly notable. Arbitration typically allows parties to present their narratives in an informal manner, free from the strict evidentiary rules applied in courts. Consequently, disputes are often resolved in significantly less time commonly one-fifth to one-tenth of the duration of a court trial[5]. This efficiency was evident in the arbitration case under discussion, despite the involvement of numerous attorneys representing eight or nine prospective licensees (alleged

[1] 9 U.S.C. § 5 (2018).
[2] *Lear, Inc. v. Adkins*, 395 U.S. 653, 673 (1969).
[3] William C. Holmes, *Intellectual Property and Antitrust Law* § 8:12 (2022).
[4] N.Y. C.P.L.R. § 7501 (McKinney 2023).
[5] Gary B. Born, *International Commercial Arbitration* 305 (3d ed. 2021).

 ISSN: 2582-6433

infringers). The process proceeded with minimal objections, reflecting the streamlined nature of arbitration[6].

Before hearings could commence, the arbitration panel had to establish procedural rules. At its first meeting, the Board drafted rules specifically tailored for the patent arbitration at hand. These rules outlined the definition of the parties, selection of the Chairman, appointment of a secretary, and protocols in case of arbitrator incapacity. They also covered logistical elements such as hearing schedules, methods of notice delivery, quorum requirements, the order of presentation, recordkeeping, data access, hearing closure, award issuance, arbitrator immunity, and the admissibility of various forms of documentary evidence, including copies of patents and textbook extracts[7].

A key requirement was that the alleged infringers submit detailed disclosures of their potentially infringing technologies to the Arbitration Board within a specified timeframe, which they did. Following this, the patent owner submitted a formal complaint, and the eight licensees filed their respective answers, thereby bringing the matter to issue. All parties were then instructed to first address the common issue determining the validity and scope of the contested patents before moving on to issues specific to individual claims of infringement[8].

2.4 TRIAL OF ISSUES (VALIDITY)

Following the opening statements, the patent owner commenced its case by submitting the patents into evidence, supported by a detailed explanation from a recognized expert in the relevant technical field. This presentation also included an extensive review of the file wrapper histories, as issues of file wrapper estoppel were central to the defense[9]. In response, the prospective licensees submitted prior art references and offered expert testimony to interpret the file wrappers and illustrate the relationship between the prior art and the contested patents. The patent owner followed with rebuttal evidence, and both parties concluded the first phase concerning validity and scope by submitting comprehensive legal briefs. At the Board's request, each party then proposed a draft award, outlining desired findings based on the evidence[10]. The Board, after deliberation, issued a unanimous decision affirming the patents' validity while expressly excluding certain specific constructions from their scope. This ruling differed from typical judicial decisions in its detailed summary format and lack of clarity

[6] Thomas E. Carbonneau, *The Law and Practice of Arbitration* 147 (7th ed. 2020)
[7] Popkin, *Arbitration Benefits the Lawyer, 6* ARB. J. I13, 114 (1942).
[8] *American Safety Equip. Corp. v. J.P. Maguire & Co.*, 391 F.2d 821, 825 (2d Cir. 1968).
[9] *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535 U.S. 722, 733 (2002).
[10] Thomas E. Carbonneau, *Cases and Materials on Arbitration Law and Practice* 211 (8th ed. 2023).

 ISSN: 2582-6433

regarding the rationale behind the exclusions, which caused some uncertainty. However, no party suffered substantial prejudice as a result.

Following this ruling, the arbitration proceeded to evaluate individual infringement claims concerning each prospective licensee's specific product constructions.

2.5 TRIAL OF ISSUES (INFRINGEMENT)

At this phase of the arbitration, the proceedings shifted to address each alleged infringer individually, ending the need for collective defense. For each case, evidence regarding specific alleged infringements was presented, having already been voluntarily submitted and reviewed by the patent owner. Both parties provided expert testimony as needed, and each case was submitted for a binding decision by the Board. Awards were issued per case, with some rulings favoring the patent owner for certain constructions and against it for others. The hearings proceeded efficiently, with minimal objections, as the patent owner had prior access to the infringers' product disclosures under the agreement. Since the infringers had transparently reported their commercial outputs, no procedural delays arose. The time required for each case varied based on the number of alleged infringements; some were resolved in a single day, while others required more time. Typically, separate counsel represented the individual alleged infringers.

2.6. FINAL AWARD

After all hearings concluded and individual awards were issued with formal notice to each party, the Arbitration Board prepared a final award summarizing all decisions, both favorable and unfavorable. Although no written opinions accompanied the awards, the Board's Chairman, upon unanimous request from counsel, provided a verbal explanation for the record. This clarified the Board's reasoning, shifting from merely identifying excluded constructions to affirmatively stating which elements constituted infringement[11]. Such clarification was essential for assessing future infringement claims involving new or modified products introduced by the alleged infringers or licensees

2.7 RESULTS OF ARBITRATION

The arbitration concluded with both favorable and unfavorable outcomes for nearly all parties, resolving eight patent disputes involving approximately twenty-eight contested machine

[11] Klaus Peter Berger, *Private Dispute Resolution in International Business* vol. 1, 551 (3d ed. 2020).

 ISSN: 2582-6433

constructions. As in most legal disputes, neither side achieved a complete victory, with awards evenly distributed. Compared to traditional litigation, the cost of arbitrating all eight cases was significantly lower equal to or less than litigating just one or two complex infringement cases in court, excluding potential appeal costs. Arbitration also proved highly time-efficient. Preparation on validity and scope issues took only a few days, and hearings were completed in about ten days, with final awards promptly delivered. In contrast, U.S. court trials would likely have taken four times longer due to backlogged dockets. A notable advantage was the absence of time-consuming prior use evidence, since all prior art came from patents and publications. For complex technical patent cases, arbitration clauses may benefit from permitting arbitrators to consult neutral experts, further improving efficiency and informed decision-making.

CHAPTER-III

PATENT ARBITRATION COMPARED WITH PATENT LITIGATION

3.1 VOLUNTARY ARBITRATION

In 1982, the Patent Act was amended to formally recognize voluntary arbitration as a legitimate method for resolving patent disputes involving validity or infringement[12]. Section 294 now permits parties to agree to arbitration either through an arbitration clause within a contract or via a separate written agreement executed before or after a dispute arises. Courts have since expanded the scope of this provision to cover interference claims and inventorship issues as well[13]. Under Section 294, patent arbitration proceedings, the resulting awards, and their confirmations are governed by Title 9 of the Federal Arbitration Act (FAA), provided there is no conflict with the provisions of the Patent Act. Additionally, arbitrators must consider any defenses listed under Section 282 if raised by the parties. These include defenses such as non-infringement, invalidity, unenforceability, or absence of liability[14].

Historically, several court rulings had cast doubt on the arbitrability of patent validity issues, suggesting such matters should be decided solely by the judiciary. This led to reluctance among parties to pursue arbitration in patent matters. However, with legislative backing and strong support from figures like Senator Mathias, Section 294 was smoothly passed and codified. Since then, the American Arbitration Association, with guidance from a Patent Advisory Committee, has introduced specific rules tailored to patent-related arbitration.

[12] 35 U.S.C. § 294 (2006); Act of Aug. 27, 1982, Pub. L. No. 97-247, 96 Stat. 317, 322.
[13] Miner Enters., Inc. v. Adidas AG, No. 95 C 1872, 1995 WL 708570, at *3 (N.D. 111. Nov. 30, 1995).
[14] 35 USC Sec 282

 ISSN: 2582-6433

3.2 VALIDITY OF 35 USC SEC 294

35 U.S.C. § 294, titled "Voluntary Arbitration," is comprised of five subsections, (a) through (e), each addressing different facets of patent arbitration. Subsection (a) permits arbitration agreements regarding patent validity or infringement either through a prior contractual clause or a post-dispute written agreement. Once such an agreement is made, it is deemed "valid, irrevocable, and enforceable," mirroring Section 2 of the Federal Arbitration Act (FAA), though Section 294 applies specifically to patent disputes, whereas the FAA covers a broader range of matters.

Subsection (b) outlines that arbitration must adhere to Title 9 of the United States Code, provided it doesn't conflict with § 294. Importantly, arbitrators are required to consider all defenses listed in 35 U.S.C. § 282 if raised. These include non-infringement, lack of liability, unenforceability, and invalidity under various statutory grounds, including those related to Sections 112 and 251[15].

Subsection (c) was introduced to address public interest concerns previously raised in cases like ***Lear v. Adkins***[16]. It limits the binding effect of an arbitration award on patent validity or infringement solely to the parties involved in the agreement, meaning the decision holds no precedential value for third parties and does not implicate the principle of comity.

Subsections (d) and (e) detail notification obligations. Once an arbitration award is made, the patentee, licensee, or assignee must notify the Commissioner of Patents in writing. This includes a separate notice for each patent, with detailed information such as patent number, parties involved, inventor, and a copy of the award. The same applies if a court modifies the award. According to PTO Rule 1.335, these awards become part of the public record, unlike typical confidential arbitration, and are unenforceable until the Commissioner receives proper notice[17].

3.3 LITIGATION V ARBITRATION

In patent litigation, once infringement is established by a court, the appropriate remedy whether damages, a permanent injunction, or both is typically at the court's discretion. The establishment of the United States Court of Appeals for the Federal Circuit in 1982 marked a significant development, granting it exclusive jurisdiction over all patent-related appeals[18]. The

[15] Davis, Resolving Patent Disputes by Arbitration and Minitrial, 65 J. PAT. OFF. SOC'Y 275, 277-78 (1983).
[16] 395 U.S. 653 (1969)
[17] Pegram, An Analysis and Explanation of the Statutes Now Affecting Patent Arbitration, 11 AM. PAT. L.A.Q. 274, 277 (1983).
[18] 28 U.S.C. § 1295(a)(1)

 ISSN: 2582-6433

rationale behind this specialized court was twofold: first, to ensure consistency in the application of patent law by eliminating conflicting rulings across different circuits, and second, to assign patent disputes to judges with specific expertise in this complex field. As a result, the Federal Circuit created a presumption favoring permanent injunctions in cases where infringement is found, grounded in the fundamental nature of patent law, which confers exclusive rights to inventors for a limited time in exchange for public disclosure[19].

In evaluating whether patent-related disputes are appropriate for arbitration, it is essential to consider the types of patent controversies that arise and whether they may be legally submitted to arbitration. Generally, patent disputes can be grouped into four categories:

1. Contractual disputes involving patents, such as licensing agreements, royalty payments, and employer-employee invention rights.
2. Priority disputes concerning the originality of an invention, particularly during patent prosecution or under statutory provisions compelling the issuance of a patent following unsuccessful interference proceedings.
3. Conflicts between interfering patents claiming the same invention, with courts having authority to invalidate either or both.
4. Disputes over patent validity and infringement.

While arbitration is generally permitted for most disputes unless restricted by statute or public policy, specific limitations exist concerning patents due to their public nature. Courts have historically been skeptical of using arbitration to resolve issues like validity, arguing that because patents affect not only private interests but also the public domain, their legitimacy should be determined by courts of competent jurisdiction[20].

This skepticism was evident in cases such as **Zip Mfg. Co. v. Pep Mfg. Co**., where the court denied a motion to stay infringement litigation in favor of arbitration, ruling that the agreement did not fall under federal jurisdiction as it did not involve interstate commerce[21]. Though arbitration could potentially resolve issues of patent infringement and even validity between private parties, such outcomes would not bind the public nor impact the broader enforceability of the patent.

Further complications arise because a patent is often regarded as a contract between the government and the inventor. As such, the government, as a party to that grant, cannot be excluded from decisions affecting the scope or legitimacy of that right. Arbitration

[19] eBay Inc. v. MercExchange, L.L.C., 547 U.S. 388, 393–94 (2006).
[20] Lear, Inc. v. Adkins, 395 U.S. 653, 670–71 (1969)
[21] Zip Mfg. Co. v. Pep Mfg. Co., 44 F.2d 184

 ISSN: 2582-6433

proceedings, by their private nature, cannot substitute judicial review when public rights are implicated, such as the general validity of a patent[22].

Nonetheless, arbitration may be suitable in limited contexts. For example, in priority disputes, parties may agree to arbitrate the question and subsequently file the results such as a disclaimer or abandonment with the Patent Office under Rule 107. However, courts may still independently evaluate such concessions, and these outcomes are not guaranteed to be binding. As illustrated in **United Chromium and Julius Kayser & Co. v. Rosedale Knitting Co**., courts have invalidated patents or reassessed priority despite prior arbitration agreements or outcomes.

Conversely, if the issue is solely infringement excluding validity arbitration is generally more acceptable. In one New York case, the court confirmed an arbitrator's decision regarding infringement and damages. Though acknowledging that a court would have had exclusive jurisdiction had the issue come via litigation, it upheld the arbitration award because no validity challenge was raised. In such scenarios, where only private infringement claims are in dispute, state arbitration laws typically allow enforcement of arbitration agreements and resulting awards between the parties involved[23].

3.4 STATE ARBITRATION STATUTE

State arbitration laws, applicable when agreements do not involve interstate commerce, generally fall into three categories:

(1) states adopting variants of the Uniform Arbitration Act, which closely resemble the Federal Arbitration Act;
(2) states permitting arbitration of current or future disputes but requiring specific formalities; and
(3) states still adhering to common law, where future-dispute arbitration clauses are unenforceable.

The Uniform Arbitration Act validates written agreements to arbitrate existing or future controversies and allows limited judicial review. Under such statutes, arbitration clauses in patent-related agreements like licensing or sale of inventions are enforceable, especially where patent validity is not disputed. Selecting specialized patent attorneys as arbitrators ensures competent adjudication. However, due to limited case law, arbitration procedures and scope should be clearly detailed in the agreement. Since arbitrators lack authority to grant injunctions,

[22] **United States v. Bell Tel. Co., 167 U.S. 224, 239 (1897).**
[23] **Julius Kayser & Co. v. Rosedale Knitting Co., 138 F.2d 640, 642 (3d Cir. 1943).**

 ISSN: 2582-6433

the award should include the losing party's commitment to cease further infringement, ensuring enforceability of future conduct based on the arbitrator's decision.

CHAPTER – IV

INTERNATIONAL ARBITRATION OF PATENT DISPUTES

4.1 ARBITRAL INSTITUTIONS

Numerous global institutions have established arbitration frameworks. The UNCITRAL Arbitration Rules serve as a widely used ad hoc model, while WIPO developed its own arbitration rules tailored to intellectual property (IP) disputes, enhancing confidentiality and adapting UNCITRAL provisions[24]. The ICC also offers notable arbitration rules, with Article 3 of Appendix III allowing ad hoc institutional appointments. In the U.S., the AAA and its international wing, ICDR, provide rules for general and patent-specific disputes[25]. Other institutions include LCIA in the UK, the Arab IP Mediation and Arbitration Society in Jordan, and China's IP Arbitration Center, founded in 2003 and 2007 respectively.

4.2 ARBITRABILITY OF PATENT DISPUTES

The concept of "arbitrability" pertains to whether a dispute is legally eligible for resolution through arbitration. Some jurisdictions restrict arbitration for specific subjects such as marital, employment, and intellectual property matters due to overriding public policy concerns. Determining the arbitrability of a matter often depends on national legal principles and socioeconomic priorities. In international disputes, arbitration must navigate the conflicting public policies of the nations involved.

Patent disputes, in particular, present complex arbitrability issues. Patents are state-granted monopolies, regulated through national statutes that determine how patents are issued and enforced. Legal questions surrounding a patent's scope, validity, and enforceability typically fall under state authority. For example, while U.S. courts assess patent validity in infringement defenses, Japan assigns that power solely to its Patent Office. U.S. jurisprudence sometimes holds that arbitration cannot decide patent validity, as such decisions should rest with public institutions rather than private entities, ensuring consistency with public policy and legal oversight.

[24] William K. Slate II, International Arbitration: Do Institutions Make a Difference?, 31 WAKE FOREST L. REV. 41, 42 (1996).
[25] AM. ARBITRATION AsS'N, INTERNATIONAL DISPUTE RESOLUTION PROCEDURES (2009) [hereinafter IDRP], available at http://www.adr.org/sp.asp?id=33 994.

 ISSN: 2582-6433

Internationally, views differ on whether patent validity can be arbitrated. The United States, Canada, and Switzerland permit arbitration of such issues, while France and Italy reject it based on public policy. Other countries may enforce arbitration awards as private agreements without recognizing the arbitrability of validity itself.

Despite these variations, international arbitration offers key advantages. It ensures neutrality by allowing parties to choose impartial arbitrators and applicable legal frameworks. It also avoids protracted litigation in multiple jurisdictions, reducing costs and risks by consolidating disputes into a single forum that issues a binding decision more efficiently.

4.3 APPROACHES TAKEN IN VARIOUS COUNTRIES

ENGLAND AND WALES

The law of England and Wales generally permits arbitration of disputes involving both registered and unregistered IP rights. Under the Patents Act 1977, arbitration may be ordered in cases involving compulsory licence oppositions or Crown use disputes, subject to specific conditions (sections 52 and 58). While no broader statutory rules exist on arbitrability, case law supports arbitration. In Lifestyle Equities v Hornby Street [2022][26], and AJA Registrars v AJA Europe [2020][27], courts upheld arbitration agreements in IP disputes, reinforcing this permissive stance.

UNITED STATES

Under 35 U.S.C. § 294(a), U.S. law permits parties to arbitrate current or future patent disputes through contractual agreements. However, per § 294(c), arbitration awards are final only between the parties and do not affect third parties.

GERMANY

Under section 1030(1) of the German Code of Civil Procedure, IP disputes including trademarks, copyrights, and patents are generally arbitrable. However, patent validity remains contentious, as such matters typically fall under the exclusive jurisdiction of the Federal Patent Court, despite some contrary judicial commentary.

CHINA

Article 2 of the PRC Arbitration Law permits arbitration of contractual and related disputes,

[26] 2022] EWCA Civ 1050
[27] [2020] EWHC 98 (Ch)

 ISSN: 2582-6433

making IP infringement generally arbitrable. However, Article 3(2) excludes matters under administrative authority, such as IP validity. In *Shandong Kangbao v Beijing Huayu Tongfang*[28] (2020), China's Supreme Court held that patent ownership disputes exceed contractual boundaries and must be resolved by courts, not through arbitration, regardless of any arbitration clause.

SINGAPORE

Singapore amended the Arbitration Act and the International Arbitration via the Intellectual Property Dispute Resolution Act 2019to clarify that:

• IP disputes are arbitrable in Singapore.

It is not contrary to public policy to enforce arbitral awards involving IP rights.

4.4 ADVANTAGES OF INTERNATIONAL ARBITRATION

A. SAVING TIME

Arbitration offers a significantly faster alternative to litigation, especially in patent disputes that can last over a decade due to court backlogs. While U.S. district court patent cases averaged 1.12 years from 1995–1999, arbitration can begin whenever parties are prepared[29]. With options like summary adjudication, arbitration avoids lengthy delays, making it a more time-efficient method for resolving intellectual property disputes.

B. SAVING COST

Arbitration offers a faster and more cost-effective alternative to litigation, especially in complex international patent disputes. Unlike litigation, which involves high expenses for expert witnesses, discovery, and trial preparation, arbitration allows parties to select subject-matter experts as arbitrators, avoiding the need to educate judges or juries. In the U.S., expert arbitrators typically charge $250–$400 per hour. Arbitration is particularly economical in cross-border disputes, replacing multiple lawsuits and reducing the risk of inconsistent outcomes. Moreover, arbitral awards are generally final and not subject to appeal, minimizing the need for appellate lawyers and further expert testimony, thus saving both time and cost.

C. CONFIDENTIALITY

Confidentiality is a key benefit of international patent arbitration. In jurisdictions like England,

[28] [2020] EWHC 348 (Comm)
[29] Schlessinger v. Rosenfeld, Meyer & Susman, 40 Cal. App. 4th 1096, 1103 (1995).

 ISSN: 2582-6433

confidentiality is implied even without explicit clauses. Institutions like the LCIA and SIAC prohibit disclosure of arbitration details, helping parties protect sensitive information particularly in patent validity disputes by preventing exposure to the public or competitors[30].

D. PREDICTABILITY

Parties often prefer arbitration for its predictability, as it allows them to choose both the governing law and the seat of arbitration[31]. This avoids unfamiliar foreign laws and unpredictable jury decisions. Arbitration offers greater legal certainty and can lead to mutually beneficial outcomes rather than zero-sum judgments.

E. FEXIBILITY

When parties agree to an arbitration clause, they may choose the arbitration institution and location as well. However, the entire arbitration need not occur at the seat of the arbitration institution. It depends on where the parties, lawyers, evidence, documents and witnesses are located. Furthermore, parties and arbitrators can choose anywhere to arbitrate.

F. EXPERTISE

In civil and common law systems, judges and juries often lack technical expertise, making complex patent issues challenging. In arbitration, parties can appoint expert arbitrators familiar with the technology, ensuring informed decisions[32]. This flexibility allows arbitrators to critically assess expert reports rather than relying on them without scrutiny.

CHAPTER-V

CONCLUSION AND SUGGESTIONS

Patent arbitration offers an efficient, cost-effective, flexible, and private method for resolving disputes, allowing companies to enforce their rights without enduring lengthy and costly litigation. This is particularly beneficial for small or emerging high-tech businesses lacking the resources to engage in court proceedings. These companies should include arbitration clauses in their contracts to ensure a faster and more affordable path to resolving potential conflicts. For cross-border business arrangements, it is advisable for parties to agree in advance on

[30] Union Oil Co. of Cal. v. Leavell, 220 F.3d 562, 568 (7th Cir. 2000).
[31] Scherk v. Alberto-Culver Co., 417 U.S. 506, 519 (1974).
[32] Paul M. Schoenhard, Reversing the Reversal Rate: Using Real Property Principals to Guide Federal Circuit Patent Jurisprudence, 17 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 299, 304-05 (2007).

 ISSN: 2582-6433

arbitration procedures and applicable law.

Although critics argue arbitration lacks certain judicial features such as precedent and procedural safeguards, supporters highlight these very differences as advantages. The absence of broad discovery and an appeals process significantly reduces time and expense, while maintaining confidentiality. Arbitration is not a universal solution but serves as a valuable alternative forum for those aiming to avoid the financial strain and business disruption of litigation.

Far from being a new practice, arbitration is a long-established dispute resolution tool now being adapted to modern patent conflicts, including questions of infringement, validity, and inventorship. When well-designed, an arbitration proceeding can serve as an effective alternative to post-grant review processes, which, while useful, do not fully replace the benefits arbitration can offer. However, to achieve optimal results, the arbitration process must be thoughtfully tailored to the specific dispute.

One limitation needing reform is the lack of a mandatory written explanation from arbitrators detailing their reasoning. In today's fast-paced innovation landscape, arbitration's speed and confidentiality may be critical for companies aiming to stay competitive.

CHAPTER VI

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