



# **The arbitration process and the role of the Expert Committee (EC)**

**Module: All-D2-1**

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# The Arbitration process in detail

Workshop on Article 6  
Internal Regulations (12 December 2023)

- ▶ Baseball Arbitration Procedure
- ▶ Dispute resolution
- ▶ Timelines in the procedure
- ▶ Topics in an arbitration process

## Before we start:

- What is Baseball Arbitration?



# Notable Baseball Arbitration Cases

Final-Offer Salary Disputes in MLB History

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1974 – 2026

landmark cases  
that shaped the system

# Landmark Arbitration Cases

| Year | Case                              | Player Filed | Team Offered | Winner | Significance                                                                 |
|------|-----------------------------------|--------------|--------------|--------|------------------------------------------------------------------------------|
| 1974 | <b>Woodson vs. Twins</b>          | \$30,000     | \$23,000     | Player | First-ever MLB salary arbitration hearing                                    |
| 2001 | <b>Casey vs. Reds</b>             | \$3.0M       | \$2.6M       | Player | Colorful hearing; agent cited manager's own praise                           |
| 2024 | <b>Guerrero Jr. vs. Blue Jays</b> | \$19.9M      | N/A          | Player | Largest salary decided at hearing at the time                                |
| 2026 | <b>Skubal vs. Tigers</b>          | \$32.0M      | \$19.0M      | Player | Largest gap (\$13M); richest award ever; "special accomplishments" provision |
| 2026 | <b>Bubic vs. Royals</b>           | \$6.15M      | \$5.15M      | Player | Won after breakout 2025 season                                               |



## How It Works in Baseball Salary disputes:

- ▶ Baseball arbitration is a “final-offer” system.
- ▶ Both the player and team submit a proposed salary, supported by their arguments.
- ▶ A three-person panel of independent arbitrators must choose one figure or the other.
- ▶ They cannot split the difference or award any amount in between.
- ▶ This incentivizes both parties to submit reasonable figures.

# Why Use Baseball Arbitration?

- ▶ Traditional arbitration:
  - ▶ include mediation
  - ▶ can include negotiation
  - ▶ may split the difference
  - ▶ can incentivize extreme positions
  - ▶ can be endless process.
  
- ▶ Baseball arbitration:
  - ▶ avoids this behavior
  - ▶ stimulates reasonableness

## Key Objective

- ▶ Drive parties toward realistic proposals
- ▶ Promote settlement before arbitration
- ▶ Ensure efficiency in dispute resolution

## Core Mechanism for ILP

- ▶ Two final offers submitted by Patentee Member and Requesting Member
- ▶ Independent assessment by an arbitrator
- ▶ Careful consideration of the reasoning of both Members
- ▶ Selection of the most reasonable proposal
- ▶ Binary outcome



## Application in IP and Licensing (ILP Context)

- ▶ Used in determining royalties and/or lump sums
- ▶ Relevant for patent licensing disputes, in case bilateral negotiations fail
- ▶ Supports fair valuation of traits

## Concept of 'Most Reasonable'

- ▶ Arbitrator selects proposal closest to fair outcome
- ▶ Requires economic and technical assessment
- ▶ Linked to FRAND-like reasoning
  - ▶ Fair: negotiate honestly and in good faith
  - ▶ Reasonable: charge licensing fees that are not excessive
  - ▶ Non-Discriminatory: offer similar terms to similar companies

# Advantages

## Incentive Effects:

- ▶ Discourages extreme positions
- ▶ Encourages balanced and realistic proposals
- ▶ Increases likelihood of pre-arbitration settlement

## Efficiency Effects:

- ▶ Faster than traditional arbitration
- ▶ Reduced procedural complexity
- ▶ Lower transaction costs

# Advantages

## Quality of Submissions - effects:

- ▶ Parties must submit well-reasoned proposals
- ▶ Greater clarity and structure
- ▶ Improves decision-making

## Fairness - effects:

- ▶ Avoids arbitrary compromise outcomes
- ▶ Decision anchored in 2 proposals (Requesting Member & Patentee Member)
- ▶ Promotes credibility of process

# Strategic Implications for Parties

- ▶ Need for strong justification
- ▶ Use of comparables and data
- ▶ Avoid overly aggressive positions

# Risks and Limitations

- ▶ Binary outcome may feel rigid
- ▶ Requires high-quality information
- ▶ Potential asymmetry between parties

## Relevance for ILP

- ▶ Supports consistent royalty determination
- ▶ Aligns with FRAND principles
- ▶ Enhances transparency and predictability

## Conclusion

- ▶ Baseball arbitration improves discipline in bilateral negotiations
- ▶ Encourages fairness and efficiency during bilateral negotiations
- ▶ Particularly suited for valuation disputes

# Dispute resolution:

Described in article 6 of the Internal Regulations of ILP

## Article 6 - Dispute Resolution Framework

- ▶ Article 6 establishes the dispute resolution system within ILP
- ▶ Applies when members cannot bilaterally agree on licensing terms
- ▶ Includes the Baseball Arbitration Procedure and Review mechanisms

The baseball arbitration is based on a standard license agreement (SLA) where the only negotiable term is the Remuneration, being a Royalty Percentage of the net sales or a Lump Sum. No other element of the SLA is negotiable.

## Article 6.1 & 6.2: - General Principle

- ▶ Members should first attempt to reach agreement through bilateral negotiations
- ▶ Licensing disputes should preferably be resolved amicably

## Article 6.1 & 6.2:

### 6.1

- ▶ The request to initiate the Baseball Procedure shall be made to the Secretary in writing.
- ▶ The Secretary shall request both Members to submit their respective proposal for the Remuneration (either a Royalty Percentage or a Lump Sum), to the Secretary.
- ▶ Both Members shall submit their proposal in writing for the Remuneration within two (2) weeks following receipt of the request by the Secretary.

### 6.2

- ▶ The Secretary shall send the proposal of the Requesting Member to the Patentee Member and vice versa.
- ▶ Both Members will try to agree on and to execute a License Agreement within a period of three (3) weeks after receiving the proposals.
- ▶ This period can be extended by mutual agreement of both Members.

## Article 6.3 - Escalation to the Baseball Procedure

- ▶ If negotiations fail, the Requesting Member may trigger the Baseball Procedure by filing a request thereto in writing to the Secretary.
- ▶ Members submit within 2 weeks the reasoning why that Member's own proposal is reasonable.
- ▶ The proposals plus reasoning will be send by the Secretary to the Initial Board.
- ▶ These documents represent the final positions of each party.
- ▶ Secretary will organize a conference of the Initial Board, and they will evaluate the proposals and choose either the proposal of the Requesting Member or the proposal of the Patentee Member, whichever is the most reasonable proposal according to its opinion.

## What the Initial Board May Consider When Selecting the Most Reasonable Proposal

- ▶ Comparable license agreements for similar vegetable traits.
- ▶ Royalty benchmarks used within the ILP licensing framework.
- ▶ The technical value and innovation level of the patented trait.
- ▶ The commercial importance of the trait.
- ▶ Market conditions and expected commercial value of varieties, carrying the trait.
- ▶ Economic arguments and evidence provided by the parties.
- ▶ Consistency with licensing practices within the vegetable breeding sector.
- ▶ The objective of ensuring fair and reasonable access to patented traits under the ILP system.

## Who is member of the Initial Board?

- ▶ Article 10 of the Expert Committee-by-laws:
- ▶ On a case-by-case basis, the Chairman (of the Expert Committee) shall appoint three Experts in respect of whom no conflict of interest within the meaning of article 12.2 exists who shall jointly form the relevant initial board of the Expert Committee (the “Initial Board of the Expert Committee”).
- ▶ The Chairman may not form part of the Initial Board of the Expert Committee.

## Article 6.4 - If no proposal is submitted

- ▶ If a Patentee Member does not submit a proposal under this article 6, the Secretary will inform the Initial Board of the Expert Committee accordingly.
- ▶ In such a case the Initial Board of the Expert Committee shall consider the proposal of the Requesting Member to be the most reasonable according to its opinion.
- ▶ The Secretary will promptly notify the Members involved in writing about the decision of the Initial Board of the Expert Committee.

## Article 6.5 - Request for Review

- ▶ Each of the Members involved in the Baseball Procedure may file in writing a request for revision against the decision under 6.3 or 6.4 on the Remuneration with the Objection Board of the Expert Committee, within one (1) month following the date of the decision (“**Request for Review**”).
- ▶ The Objection Board of the Expert Committee shall solely perform a formal review of the Baseball Procedure but shall not revisit the substantive facts of the decision of the Initial Board of the Expert Committee as such.
- ▶ The grounds for the revision must be submitted jointly with the written request to the Objection Board of the Expert Committee in order for the objection to be considered properly filed.

## Article 6.6 - Response from the other party

- ▶ In case a Member files a Request for Review:
  - the other Member involved will be notified by the Secretary
  - the other Member may file a response in writing with the Objection Board of the EC
  - within one (1) month following the date of the notification by the Secretary.
  
- ▶ If a Request for Review is properly filed:
  - the Objection Board of the EC shall decide (2 months) whether the initial decision should be revoked, Yes/No.
  - If Yes, a new Baseball Procedure will be initiated.
  - If No, the initial decision of the Initial Board of the EC will remain in force.
  
- ▶ The decision upon the Request for Review must be properly reasoned by the Objection Board of the Expert Committee

# Who is member of the Objection Board?

- ▶ The Objection Board examines the **Request for Review**
- ▶ It focuses on procedural correctness

The composition of the Objection Board follows from article 11.1 of the Expert Committee by-laws:

“In case the Chairman has appointed three (3) Experts in accordance with article 10.1 to form part of the Initial Board of the Expert Committee, he shall appoint from the remaining Experts three (3) Experts who are not conflicted pursuant to article 12.4 who shall jointly form the relevant objection board of the Expert Committee (the “Objection Board of the Expert Committee”) in that same case.

The Chairman may not form part of the Objection Board of the Expert Committee.”

## What comprises the Objection Board's review?

- ▶ The Objection Board acts as a procedural safeguard and not as an appellate body on the merits.
- ▶ It may review whether the Baseball Procedure was conducted in accordance with the Internal Regulations and the applicable procedural rules, but it may not substitute its own assessment of the reasonableness of the competing royalty proposals for that of the Initial Board.

## Examples of objections that would likely fall within the scope of the Objection Board's review include:

- ▶ the Initial Board was not constituted in accordance with the applicable rules;
- ▶ a member of the Initial Board had a conflict of interest or otherwise lacked the required independence;
- ▶ one of the parties was not given a fair opportunity to submit its arguments or supporting materials;
- ▶ procedural deadlines prescribed by the Internal Regulations or the Expert Committee By-Laws were not observed;
- ▶ the Initial Board selected a proposal other than one of the original proposals submitted under Article 6.1;
- ▶ procedural requirements set out in the Internal Regulations or the Expert Committee By-Laws were not complied with.

## Examples of objections that would likely fall outside the scope of the Objection Board's review include:

- ▶ "The Initial Board incorrectly assessed the market value of the trait."
- ▶ "A royalty rate of 2% would have been more appropriate than 3%."
- ▶ "The economic analysis submitted by Party A was more persuasive than that submitted by Party B."
- ▶ "The Initial Board should have attached greater weight to comparable licence agreements."
- ▶ "The Initial Board should have interpreted the evidence differently."
- ▶ "The Initial Board reached the wrong conclusion on the merits."

## Article 6.7, 6.8 & 6.9 - Implementation of the Decision

- ▶ Once the decision becomes final, the parties must implement it.
- ▶ The Secretary prepares execution versions of the Binding License Agreement, which qualifies as binding advice, regardless whether the document is signed by the parties thereto or not, setting out the rights and obligations of both parties vis-a-vis each other with respect to the relevant Committed Patent.
- ▶ The Patentee Member and the Requesting Member shall sign and exchange between themselves execution versions of the Binding License Agreement such that each has a fully executed version.
- ▶ The Patentee Member shall provide the Secretary with a copy of Binding License Agreement signed by both parties. The Secretary shall keep the copy with the books and records of the Association. The Secretary shall give inspection of these copies only to the Expert Committee.

## Article 6.10 - The costs for a Baseball Procedure

- ▶ The fee to cover the costs are determined by the General Meeting at EUR 30,000
- ▶ In case of the Baseball Procedure this fee shall be paid by the Member whose proposal has not been selected by the Expert Committee.
- ▶ The fee for a Request for Review shall be paid by the Member filing the request, unless the decision of the Initial Board of the Expert Committee is found faulty and revoked. In that case the costs for the revision and the subsequent new Baseball Procedure are born by the Association.

## Article 6.11 – MFN Context

In order to facilitate the decision taking within the Expert Committee and the assessment of the arguments of the Members in relation to a proposal for a Remuneration:

- ▶ all Members shall communicate all Royalty Percentages they have agreed upon in a Standard License Agreement to the Association (see next slide)
- ▶ the Association shall keep a list of all these Royalty Percentages, as well as of the Royalty Percentages decided upon by the Expert Committee in accordance with this article 6.
- ▶ The Association shall also keep a list of the MFN Percentages. The list showing the MFN Percentage will be open for inspection to all Members, the Secretary and the Expert Committee without identification of the Licensee Member.

## Royalty Reporting Obligation in case of SLA

What kind of modifications do not change the definition of SLA:

- ▶ Administrative or immaterial deviations:
  - ▶ Contact details, notice mechanics, execution formalities, administrative/editorial amendments.

What kind of modifications do change the SLA into a Bilateral LA:

- ▶ Commercially negotiated deviations:
  - ▶ Field-of-use restrictions, different royalty base, different audit rights, special termination rights, caps on royalty payments, carve-outs from licensed rights.

In case of doubt: Guidance-role for Board of Expert Committee

# Full Process Overview - Article 6

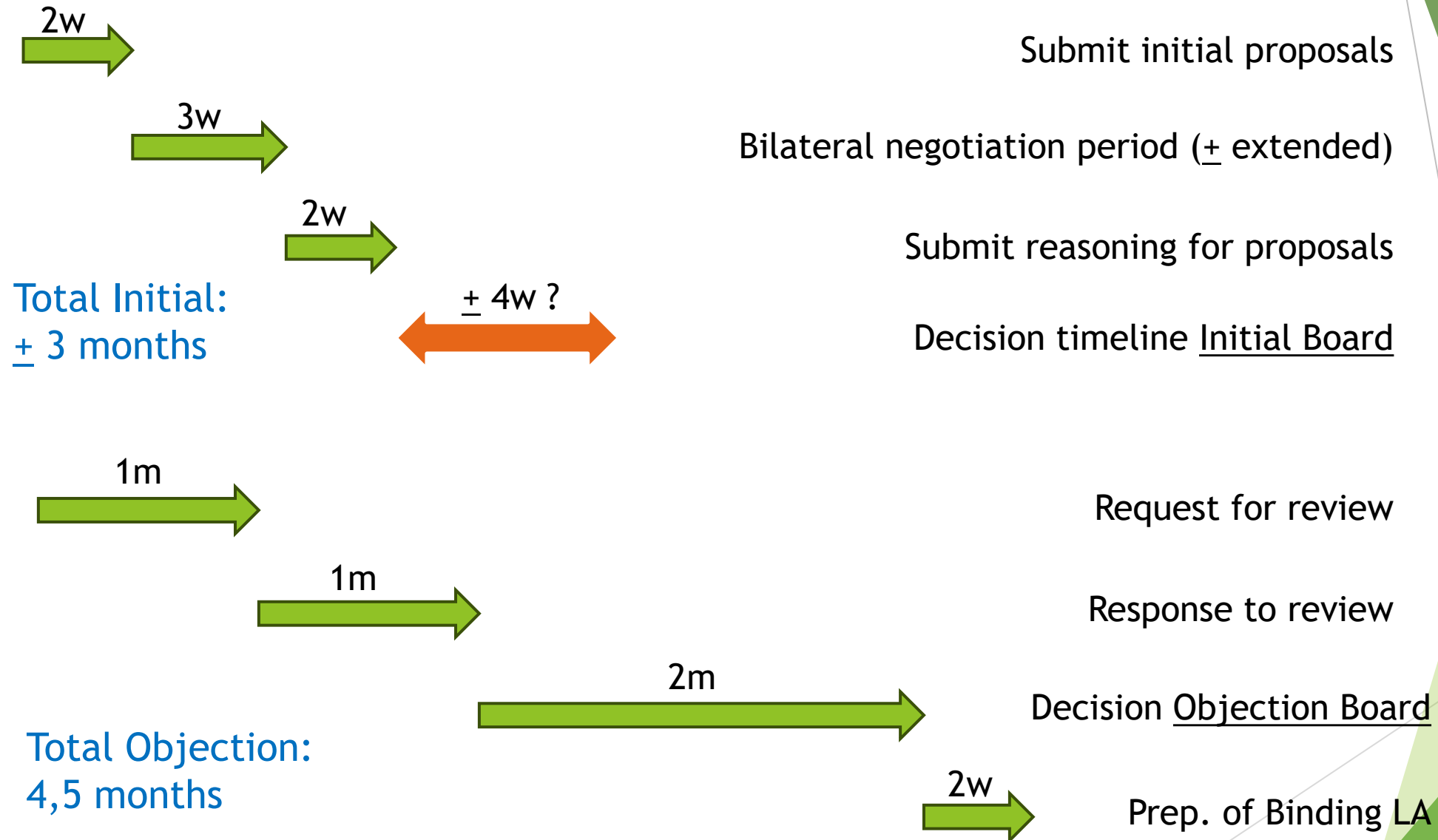
- ▶ 1. Bilateral negotiations
- ▶ 2. Baseball procedure triggered
- ▶ 3. Final offers submitted
- ▶ 4. Initial Board selects one proposal
- ▶ 5. Possible review by Objection Board
- ▶ 6. Binding license agreement implemented

# Timelines in the procedure

## Decision Timeline of the Initial Board (Baseball Arbitration)

- ▶ Step 1: Receipt by the Secretariat of the final offers and reasoning from both parties.
- ▶ Step 2: Distribution of case files to Initial Board by the Secretariat.
- ▶ Step 3: The Secretary organizes a conference of the Initial Board 'a.s.a.p.'
- ▶ Step 4: Experts review submissions, comparables, and economic arguments presented by both parties.
- ▶ Step 5: The Initial Board selects the proposal it considers the most reasonable.
- ▶ Step 6: The Secretary communicates the decision of the Initial Board to both Members.
- ▶ Note: The Internal Regulations do not specify a fixed deadline for the Initial Board decision; the requirement is that the conference and decision occur 'as soon as reasonably possible'.

# Summary Timeline - Article 6



# Topics in an arbitration process

## Can Initial Board ask questions to the Parties during an arbitration case?

### Final Offer Arbitration (Documents Only)

- ▶ The ILP system follows the concept of FOA (Final Offer Arbitration) where the decision by the Initial Board is made solely based on written submissions.

## Core Concept

- ▶ Each party submits one final offer
- ▶ No hearings or oral arguments (documents-only procedure)
- ▶ No questions posed by Initial Board
- ▶ Initial Board must choose one offer
- ▶ No modifications or compromise allowed

## Advantages

- ▶ Fast and cost-efficient
  - ▶ Encourages reasonable offers
  - ▶ Reduces strategic behavior
  - ▶ Minimizes procedural complexity
  - ▶ Designed to enforce discipline and efficiency
- 
- ▶ Possible disadvantages:
    - ▶ No opportunity to clarify
    - ▶ High reliance on written quality of Final Offer