



# Key elements for successful mediations: how to negotiate a satisfactory settlement agreement

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## Questions and answers – “Key elements for successful mediations: how to negotiate a satisfactory settlement agreement”

### How can a good mediator handle the cultural differences between the parties?

In disputes that span several jurisdictions (such as IP disputes), there are likely to be cultural differences between the parties involved. Mediators receive specific training in conflict management and it is very common that one of the specific skills in the training is to manage cultural differences between the parties. In such cases, a good mediator would have to put his or her skills into practice in order to get the parties to understand and respect the cultural backgrounds of each disputant. This could be done by asking open questions allowing the parties to arrive to this conclusion themselves.

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### How to become a mediator and what skills/requirements are required?

For the time being and pursuant to Art. 1(8) of the [Rules on Mediation](#), mediation services at the EUIPO are provided only by members of our internal staff. These are senior IP experts, who have been duly trained and accredited.

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**How can the most suitable mediator for a specific dispute be selected from the mediators’ pool? What kind of requirements (or skills) should be taken into account?**

Case managers at the Mediation Centre will assist the parties in the choice of the most suitable mediator for their case. When suggesting a possible candidate, we take into account various considerations, such as language proficiency, availability, knowledge and experience in the specific area, etc.

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If one party is a SME but the other side is a big size company I assume that as for now, we cannot request mediation. correct?

In terms of specific eligible proceedings, we have to distinguish between 1<sup>st</sup> instance and 2<sup>nd</sup> instance. At the moment, mediation can be requested for **1<sup>st</sup> instance** inter-partes proceedings **only by SMEs**, as part of the Office programme to support small companies. In this case, it would be enough that one of the parties is an SME and it may request mediation at any time after the opening of the adversarial part of the proceedings.

This is going to change, since mediation for 1<sup>st</sup> instance proceedings will be gradually opened to all users during 2024 (starting with cancellation proceedings on 1 July 2024) and 2025.

Regarding 2<sup>nd</sup> instance, the mediation request can be presented by the parties at any time following the lodging of an appeal, and the service is open for all users.

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Will I be able to fill the form and register my will, and let someone pay for the mediation in Brussels?

EUIPO mediation is free of charge if conducted **online** or - if conducted **onsite at the EUIPO’s headquarters in Alicante**, Spain.

If the parties chose to conduct an **onsite mediation at the EUIPO’s liaison office in Brussels**, an administrative charge of EUR 1.200 must be paid to cover the mediator’s travel and accommodation expenses. It should be agreed among the parties how this charge is going to be paid and how it will be shared among them.

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**Does the EUIPO follow up on the enforcement of the settlement agreement? Can the parties request EUIPO's assistance to mediate again in case further issues arise when enforcing the settlement agreement?**

The parties are the ones responsible of implementing the settlement agreement terms following what has been agreed. The EUIPO mediator will follow-up with the parties to check if they have informed the relevant instances of the Office about their settlement, but the mediator will not provide assistance with respect to actual performance. Once the mediation is concluded, the suspension of the formal proceedings is lifted, and the parties should then implement the terms of the agreement. For example, if in accordance with the terms of the settlement one of the parties must withdraw the opposition and fails to do so, the mediator cannot force the party to make the submissions nor make the retraction on their behalf.



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**On this regard, Is it appropriate for the mediator to draft the settlement agreement between the parties, or is it safer to leave it to the parties?**

The mediator is not responsible of drafting the settlement agreement. This is normally done by the professional representatives or legal counsel engaged by the parties, following what has been agreed during the negotiations.

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**Where there are multiple proceedings underway (opposition, cross cancellations), I understand a request for mediation should be made for each of these. Is it in the ADR agreement that one can request these to be consolidated?**

The parties may include in the scope of the mediation request any related cases pending between them, allowing for a global solution in one single process. For that reason, it is important that the parties clearly indicate first in the mediation request and later in the mediation agreement all the proceedings that will be included in the scope of the mediation. In terms of procedure, it is sufficient to submit the mediation request in one of the proceedings that are listed there.

The parties can also agree to expand the scope of the mediation after it has begun, or to exclude cases from the negotiations. In both scenarios, the mediation agreement must be amended to include the respective cases in or exclude them from its scope. The mediator will inform ex officio the relevant instances of the EUIPO about the changes in the scope of the mediation.

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**What are the costs of mediation? is a representative (TM-attorney/lawyer) required? Or could it be done by the SME itself?**

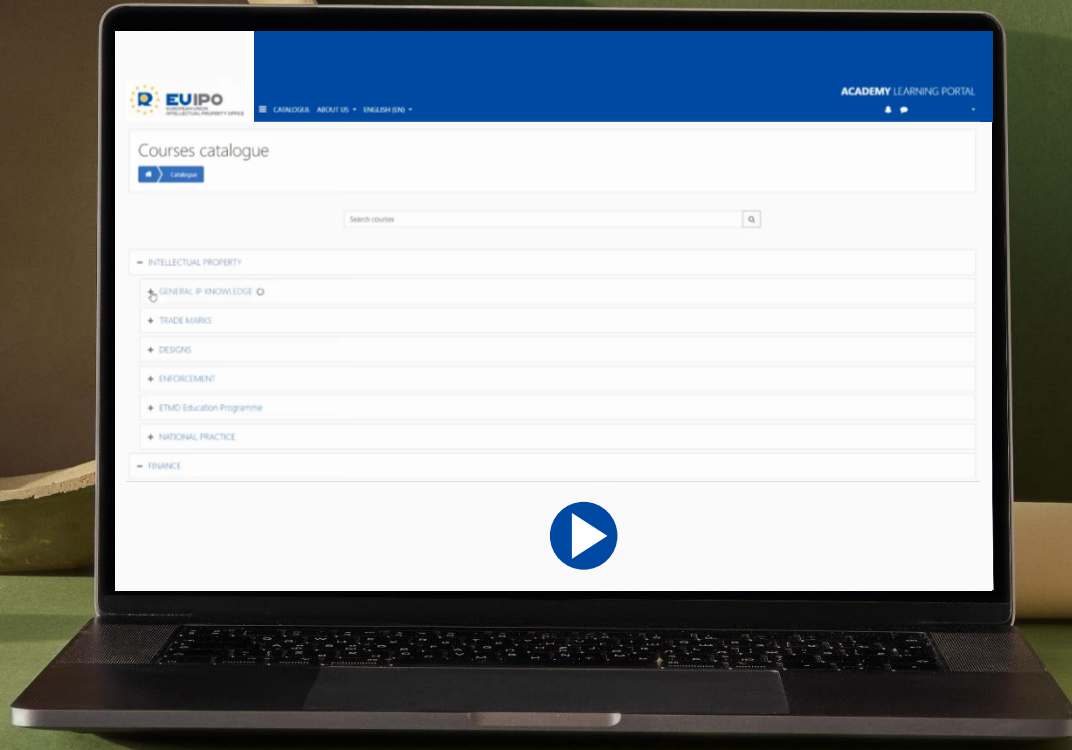
Mediation is free of charge if conducted online or at the EUIPO headquarters in Alicante. No additional fees need to be paid to the EUIPO apart from the fees that correspond to the relevant inter partes proceedings. The presence of legal counsel or other representatives in the mediation is not mandatory, although it is highly recommended.

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**Will all ADR services be available when mediation services are expanded to first instance proceedings in 2025? Especially conciliation?**

Conciliation is a service that is offered by the Boards of Appeal, and it is available only for appeal proceedings. In conciliation, the rapporteur of the case assists the parties in reaching a settlement by suggesting possible solutions on the substance of the dispute. For the time being, examiners in first instance proceedings cannot intervene in the role of conciliators. However, the parties can receive equivalent assistance in the context of a mediation – the only difference is that the neutral will not be the decision taker, but a third person who is not involved in the case

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