



EUIPO

EUROPEAN UNION
INTELLECTUAL PROPERTY OFFICE

www.euiipo.europa.eu

- Mediation at
the EUIPO
Boards of Appeal.▪

EUIPO Mediation Centre

■ **Mediation** is a process in which parties to a dispute, guided by a mediator, reach an amicable settlement of their differences pending at the EUIPO and, as the case may be, elsewhere. ([Decision No 2013-3 of the Presidium of the Boards of Appeal of 5 July 2013 on the amicable settlement of disputes \(“Decision on Mediation”\)](#)). The main characteristics of mediation are the neutrality and impartiality of the mediator, an interest-based as opposed to a rights-based process, the voluntary participation of the parties, the flexibility and confidentiality of the proceedings and the autonomy and attendance of all interested parties and their representatives.

■ **Mediator:** a member of the Office’s staff who is asked to conduct a mediation in an effective, neutral, impartial and competent way. The mediator may not be involved as an examiner, member of the Opposition Divisions, the Cancellation Divisions, the Invalidity Divisions or the Boards of Appeal in any further proceedings in the case at issue or any related case and shall conduct mediation according to the Rules on Mediation established by the Presidium.

■ **Mediation Directive:** [2008 European Parliament and the Council, “on certain aspects of mediation in civil and commercial matters” \(2008/52/EC\)](#).

■ **European Code of Conduct for Mediators:** This code of conduct sets out a number of principles to which individual mediators may voluntarily decide to commit themselves, under their own responsibility.



■ MEDIATION AT THE EUIPO BOARDS OF APPEAL

- The EUIPO Boards of Appeal offers a mediation service for inter partes proceedings, oppositions: after the end of the cooling off period and only for unrepresented SMEs, cancellations, RCD invalidities and during the appeal proceedings, allowing the parties to reach an amicable settlement.
- The role of the mediator consists of assisting the parties in identifying and building on common ground to settle their dispute.
- The mediation team is made up of [more than 20 accredited mediators](#) drawn from various parts of the Office, not just the Boards of Appeal. They are all very experienced senior staff of the Office who have received special training and accreditation, following examination, with the Centre for Effective Dispute Resolution (CEDR) and/or the Chartered Institute of Arbitrators (CIArb) and have different language profiles.
- In principle, mediations will be conducted in the language of the appeal proceedings. However, the parties are free to agree a mutually convenient language (subject to a mediator being available that masters that language; currently mediation can be performed in 9 languages: BG, DE, EL, EN, ES, FR, IT, NL, PL).



The EUIPO offers a mediation service for inter partes proceedings, during the appeal proceedings (which shall be suspended), allowing the parties to reach an amicable settlement.

The role of the mediator consists of assisting the parties in finding common grounds to settle their dispute.

STEP 1



MEDIATION IS
REQUESTED

STEP 2



PARTIES AGREE ON
MEDIATION PROCESS

STEP 3



MEDIATOR / COMEDIATOR
IS APPOINTED

STEP 4



APPEAL PROCEEDINGS
ARE SUSPENDED

STEP 5



MEDIATION
BEGINS

■ MEDIATION PROCESS AT THE EUIPO BOARDS OF APPEAL

1. What kind of matter can I mediate before the EUIPO?

- European Union trade mark or design matters in inter partes proceedings taken at the EUIPO.
- The subject matter of the mediation may, however, go beyond the scope of EUIPO appeal proceedings and embrace parallel trade mark, design or other IP right-related disputes between the same parties either elsewhere in the EUIPO or anywhere in the world.
- There are many possibilities, but it may be, for example, that both parties with conflicting rights operate in completely different markets. They could agree to keep it that way and co-exist independently. The key to successful mediation is to change the focus from legal arguments to business interests and find solutions to meet those commercial needs in a mutually satisfactory way. Mediation in ex parte cases (i.e. where the other party to a contested decision is the EUIPO itself) is not possible.

2. Who should take part in mediation? Is it binding??

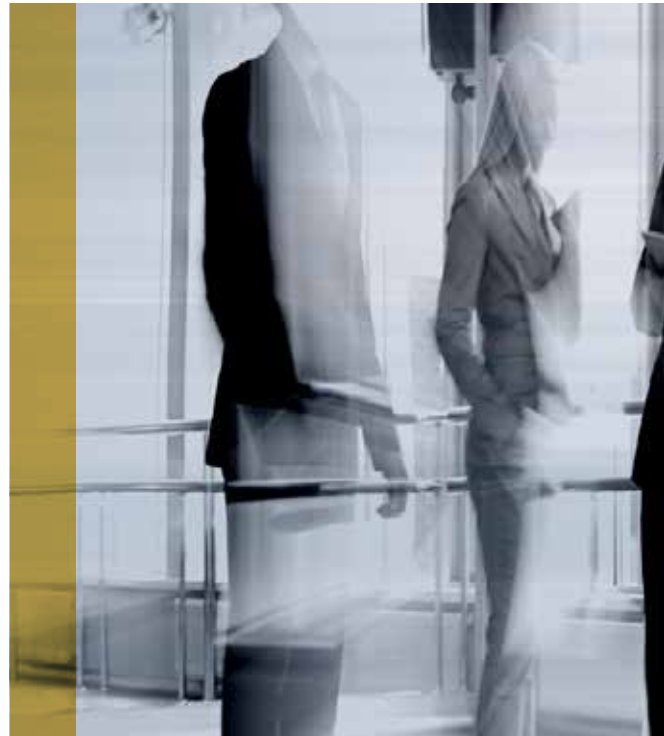
- It is important that the principals take part as mediation is not about pure legal issues, but about business interests and therefore people with authority to bind the commercial entity they represent should be present.
- Since mediation is a voluntary process, either party can withdraw from it at any time.
- Of course, if the mediation results in a settlement agreement between the parties, the formal agreement will have to be drawn up by their lawyers in the normal way. Therefore, having professional representatives or in-house legal counsel to assist the principals is highly recommendable. The EUIPO also offers a [pro bono](#) service to support those who cannot afford a lawyer or IP representative.



■ MEDIATION PROCESS AT THE EUIPO BOARDS OF APPEAL

3. What happens if mediation fails?

- Parties are free to withdraw from the mediation process at any time and cannot be forced to reach a settlement agreement.
- However, parties must undertake in good faith to make their best endeavours to reach an agreement. When a party withdraws, the mediation is immediately terminated.
- The mediator may also terminate the mediation where he or she considers that this is the most appropriate course of action. In these cases, the appeal and other proceedings will resume from the point reached prior to the mediation.
- The mediator will never be involved in the appeal proceedings and is bound to keep the substance of the mediation confidential. No record or files pertaining to the mediation will be retained by the EUIPO.



MEDIATION PROCESS AT THE EUIPO BOARDS OF APPEAL



4. What happens if mediation is successful?

- If mediation is successful, the parties will sign a settlement agreement covering the issues in dispute between the parties either partially or totally. The formal agreement will have to be drawn up by their lawyers in the normal way. Therefore, having professional representatives to assist the parties is a great asset.
- Mediation will put a stop to litigation and parties will re-focus on the future, unencumbered by the damaging impact of past misfortunes.



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PRACTICAL INFORMATION

Mediation can be requested directly from the EUIPO. The process can take as little as one day and can be arranged in 24 hours, and is held at the convenience of both parties. If mediation is held online or in Alicante it will be free of charge. Where mediation takes place at the EUIPO premises in Brussels, a one-off administrative fee of EUR 750 is charged to cover the traveling expenses of the EUIPO mediator.

A full explanation of the mediation process, the EUIPO mediators' CV, their code of conduct, a model mediation agreement and the online forms to request a mediation at the EUIPO, can be found on the EUIPO website.

Mediation at the EUIPO is held at the Office's premises, at Avenida Europa 4, 03008, Alicante, just fifteen minutes by car from the Alicante International Airport, and 5 kilometres from Alicante city centre, which is well served by train connections to other major Spanish cities.

Find out more:





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