

**Decision 2020-4 of the Presidium of the Boards of Appeal
of 17 June 2020 on Assisted Negotiation**

(“Decision and Rules on Assisted Negotiation”)

THE PRESIDIUM OF THE BOARDS OF APPEAL

Having regard to Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark¹, and in particular Articles 47(4) and 64(4) thereof,

Having regard to Council Regulation (EC) No 6/2002 of 12 December 2001 on Community Designs² and Commission Regulation (EC) No 2245/02 of 21 October 2002 implementing the Council Regulation (EC) No 6/2002³, and in particular Article 31(5) thereof,

Having regard to Commission Delegated Regulation (EU) 2018/625 of 5 March 2018 supplementing Regulation (EU) 2017/1001 of the European Parliament and of the Council on the European Union trade mark, and repealing Delegated Regulation (EU) 2017/1430⁴, and in particular Article 46(1) thereof,

Having regard to the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)⁵,

Having regard to the European Code of Conduct for Mediators,

Whereas:

- (1) The Presidium of the Boards is competent to lay down the rules and organize the work of the Boards.
- (2) The European Union Intellectual Property Office (hereinafter ‘the EUIPO’ or ‘the Office’) may, if deems appropriate, assist the parties to arrive at a friendly settlement of their dispute in any *inter partes* proceedings. Such friendly settlement could be facilitated by having recourse to Assisted Negotiation, without prejudice to other alternative dispute resolution mechanisms.

¹OJ L 154, 16.6.2017, p.1.

²OJ L 3, 5.1.2002, p. 1 as last amended by Council Regulation (EC) No 1891/2006, OJ L 386, 29.12.2006. p.14.

³OJ L 341, 17.12.2002, p. 28, as last amended by Commission Regulation (EC) No 876/2007, OJ L 193, 25.7.2007, p. 13.

⁴OJ L 104, 24.4.2018, p. 1-36.

⁵OJ L 119 4.5.2016, p. 1

- (3) Hitherto acquired experience shows that parties willingly involved in negotiations in which they have no assistance, may encounter an unstable environment, which may hinder progress in or even prevent reaching an amicable resolution of the dispute.
- (4) This Decision should only apply to *inter partes* proceedings in which one or more parties are unrepresented SMEs.
- (5) The decision to engage in Assisted Negotiation is voluntary and consensual.
- (6) In the interest of the efficient conduct of proceedings before the EUIPO and the expeditious processing of cases which may be suspended for Assisted Negotiation, the present decision is addressed to the interested parties and the Facilitator they appoint;
- (7) The main characteristics of Assisted Negotiation are the absence of conflict of interest of the Facilitator, the interest-based as opposed to rights-based procedure, the flexibility and confidentiality of the process;
- (8) Under Article 178 (1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark, the Executive Director of the EUIPO is competent to lay down the amount to be charged for any services rendered by the Office other than those specified in Annex 1 of the said Regulation. In the absence of such a decision by the Executive Director of the Office, Assisted Negotiation by Office staff should be free of charge.

HAS ADOPTED THE FOLLOWING DECISION:

Article 1
Commencement

1. Where one or both parties wishes to initiate Assisted Negotiation, a request should be submitted to the Alternative Dispute Resolution Service (hereinafter the ‘ADRS’) of the EUIPO Boards of Appeal, indicating that an amicable settlement is being sought of the case at issue with the assistance of a Facilitator.
2. Assisted Negotiation is free of charge unless otherwise provided for in a decision of the Executive Director of the Office.

Article 2
The Facilitator

1. The Facilitator is a non-partisan experienced negotiator who will assist the parties to negotiate and reach an agreement.
2. Parties are free to appoint a Facilitator from the list of Facilitators to which Article 5 of the present Decision refers or may ask ADRS to assist them in finding a suitable Facilitator.
3. The role of the Facilitator and its main duties are laid down by the Rules on Assisted Negotiation attached to the present Decision as Annex 1.

Article 3
Rules on Assisted Negotiation

The Rules governing the Assisted Negotiation process are attached to the present Decision as Annex 1.

Article 4
Exclusion of Liability

The Facilitators or the Office shall not be liable for any outcome in relation to the Assisted Negotiation conducted under the present Decision, nor shall they be liable for the implementation of the settlement agreement.

Article 5
List of Facilitators

1. The Office shall maintain a list of qualified members of its staff, who are suitably prepared to act as the Facilitator in the sense of the present Decision.
2. The list is established by the Presidium.

Article 6
Entry into force

This Decision shall enter into force on the day of its publication in the Official Journal of the Office.



BOARDS OF APPEAL

Done at Alicante, 17 June 2020

For the Presidium
Théophilos M. MARGELLOS
President of the Boards of Appeal

Annex 1

RULES ON ASSISTED NEGOTIATION

1. Definitions

- 1.1. ‘Rules’ means Rules on Assisted Negotiation.
- 1.2. ‘Assisted Negotiation’ means a process whereby support is provided by a neutral facilitator to one or more parties to enable them to negotiate in the most favourable environment possible in order to reach an agreement on the settlement of their dispute.
- 1.3. ‘Settlement agreement’ means the final agreement in which the parties lay down the terms resolving their dispute.
- 1.4. ‘Parties’ means the parties to the proceedings before the instance of the EUIPO dealing with the case and, where applicable, their representatives or advisers.
- 1.5. ‘SME’ means a small or medium-sized enterprise.
- 1.6. ‘Facilitator’ means a non-partisan experienced negotiator who will help the parties to negotiate and reach an agreement. In accordance with Article 4 of the present Rules, the Facilitator shall be an employee of the EUIPO.
- 1.7. ‘Appointing Party’ means the party who appoints the Facilitator.

2. Request for Assisted Negotiation

- 2.1. Where a party is an unrepresented SME it can request the assistance of a Facilitator for negotiations with the other party.
- 2.2. Where both parties are unrepresented SMEs, paragraph 2.1 hereof shall apply *mutatis mutandis*.
- 2.3. Parties wishing to initiate Assisted Negotiation should submit a request to the Alternative Dispute Resolution Service (ADRS) of the EUIPO Boards of Appeal, indicating that they are seeking an amicable settlement of their case with the assistance of a Facilitator.
- 2.4. The request for Assisted Negotiation shall be presented individually by the party needing assistance and may only be submitted in the context of *inter partes*

proceedings of the EUIPO.

2.5. The request shall contain:

- a) The reference number assigned to the proceedings in issue;
- b) Preferably the name of the Facilitator to be appointed;
- c) A request for the suspension of the ongoing proceedings;
- d) The contact details of the parties to the Assisted Negotiation;
- e) The signature of the requestor.

2.6. Parties are free to appoint a Facilitator from the list of qualified members provided by the Office.

2.7. Parties wishing to appoint a Facilitator may ask the ADRS to assist in finding a suitable Facilitator.

2.8. Both the request for and the entire Assisted Negotiation process shall be kept confidential from third parties.

3. Suspension of proceedings

3.1. Where parties negotiate using a Facilitator, the duty shall be incumbent on the parties to request suspension of any ongoing proceedings.

4. Absence of conflict of interest of the Facilitator

4.1. If there are any circumstances that may affect a Facilitator's impartiality or neutrality or otherwise give rise to a conflict of interests, the Facilitator must disclose those circumstances to the Appointing Party before accepting appointment to act or continuing to act. Such circumstances include but are not limited to any personal interest in the case and any involvement in that case or any related case, for example, as a representative, legal advisor, examiner or decision taker in any matter related to the dispute.

4.2. In the circumstances defined in paragraph 1 of the present Article, the Facilitator must desist from acting in the matter at hand and must inform the Appointing Party about the circumstances which obliged him to so desist.

4.3. A Facilitator may not be involved in any further proceedings of the case in issue or in any related matter.

4.4. The Facilitator must all times act with impartiality towards the Appointing Party.

5. Role of the Facilitator

- 5.1. The Facilitator's role is to support the Appointing Party in their direct negotiations, coaching them as needed, with a view to reaching an optimal settlement.
- 5.2. Having being appointed, the Facilitator shall as soon as possible thereafter contact the Appointing Party and discuss the modalities of initiating the process.
- 5.3. The Assisted Negotiation shall, in principle, be conducted in the language of the pending proceedings.
- 5.4. The Appointing Party shall submit a request for Assisted Negotiation and sign a confidentiality agreement with the Facilitator before commencement of the process.
- 5.5. The Facilitator has no authority to settle the case.

6. Participation of the Appointing Party

- 6.1. The Appointing Party must have full authority to settle the dispute and must take complete responsibility for any negotiations in which the Facilitator assists.
- 6.2. The Facilitator shall ascertain the full authority to settle.
- 6.3. The Appointing Party shall cooperate in good faith with the Facilitator to advance the Assisted Negotiation with the view to reaching an amicable settlement of the dispute.

7. Confidentiality

- 7.1. The discussions and negotiations, as well as any statements, documents and communications made within the framework of Assisted Negotiation shall be kept confidential by all persons involved in the process, in particular the Facilitator, the parties and their representatives or advisers. This includes non-disclosure of such information in any judicial, arbitral, administrative or other proceedings, in particular those before the EUIPO, unless there is an overriding legal obligation to do so.
- 7.2. Confidentiality does not apply to any documents, statements and information that are publicly available from other sources.
- 7.3. No recording or transcript of any negotiations shall be made. The Facilitator shall return, destroy or delete materials obtained for the purpose of the Assisted Negotiation after termination of that process, without retaining any copy thereof.
- 7.4. All persons involved in Assisted Negotiation shall, at the outset, sign a confidentiality agreement.

8. Termination of Assisted Negotiation

- 8.1. Assisted Negotiation may be terminated by the Appointing Party or the Facilitator at

any stage of the process.

- 8.2. Upon termination of the Assisted Negotiation, the Facilitator shall inform the ADRS of such termination.
- 8.3. Where the Assisted Negotiation has been terminated, the Appointing Parties shall remain fully responsible for ensuring that the appropriate procedural requests are made in the underlying proceedings before the EUIPO.
- 8.4. Where Assisted Negotiation results in a full settlement of the dispute, the competent instance of the EUIPO dealing with the case shall take a decision closing the proceedings.