



RULES ON MEDIATION

THE PRESIDIUUM OF THE BOARDS OF APPEAL

Having regard to its Decision No 2013-3 of 5 July 2013 on the amicable settlement of disputes (“Decision on Mediation”);

Whereas:

- (1) In the interest of the efficient conduct of proceedings before the Boards of Appeal and the expeditious processing of cases which may be suspended for mediation, rules should be issued to the interested parties and the mediator they appoint;
- (2) The present rules should facilitate the implementation, and complement where appropriate, the Presidium’s Decision on Mediation;
- (3) The European Code of Conduct of Mediators sets out a number of principles applicable in all types of mediation in civil and commercial matters;
- (4) The main characteristics of mediation are the neutrality and impartiality of the mediator, the interest-based not rights-based procedure, the voluntary participation of the parties, the flexibility and confidentiality of the proceedings and the autonomy and attendance of all parties;

Hereby decides to adopt the following Rules¹.

1 - Definitions

- 1.1 “Mediation” means a structured process whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator.
- 1.2 “Mediation agreement” means the agreement by which the parties agree to submit their dispute to mediation.
- 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 Boards of Appeal and/or where appropriate their representatives or advisers.

¹ Adopted by the Presidium on 16 June 2011.

2 - Request for mediation

- 2.1. If the parties wish to commence mediation they shall submit a joint request to the Boards of Appeal via the Registry indicating that they agree to seek an amicable settlement of their case with the assistance of a mediator.
- 2.2. The request for mediation proceedings may be presented at any time following the lodging of an appeal.
- 2.3. The joint request does not necessarily need to be made in a single document but may consist of individual requests sent to the Boards with identical content. The Boards of Appeal recommend use of the form proposed by the Office.
- 2.4. The joint request shall contain:
 - a) the reference number assigned to their appeal;
 - b) preferably the name of the appointed mediator;
 - c) a request for the suspension of the appeal proceedings;
 - d) the contact details of the parties to the mediation;
 - e) the signature of the parties.
- 2.5. The Boards of Appeal will inform the parties about the possibility of mediation when appropriate, in particular in the instructions on how to fill in the appeal form, in the letter confirming the receipt of the appeal to the appellant and in the letter notifying the appeal to the respondent.
- 2.6. The parties are free to appoint a mediator from the list established by the Presidium of the Boards of Appeal subject to Rule 4.1 and Article 3(2), (3) and (4) of the Decision on Mediation.
- 2.7. The parties may ask for the assistance of the Registry of the Boards of Appeal to appoint or to facilitate the selection of a mediator.
- 2.8. Once the mediator is appointed, the parties shall communicate with the Office through the mediator.
- 2.9. The request for mediation as the entire mediation process will not be made public by the Office.

3 - Suspension of appeal proceedings

Provided that the subject-matter of the dispute falls within the framework established by the Decision on Mediation, the statement of grounds has been filed, and, where applicable, that the administration charges have been paid to the Office, the Registrar of the Boards of Appeal shall suspend the appeal proceedings and inform the competent Board accordingly..

4 - The mediator – Independence and Neutrality

- 4.1. The parties are invited to choose a mediator freely from the list provided by the Office. The mediator may accept or not the designation.

- 4.2. If there are any circumstances that may affect a mediator's independence or give rise to a conflict of interests, the mediator must disclose those circumstances to the parties before acting or continuing to act. Such circumstances include but are not limited to any personal interest in the case and any involvement in the case or any related case, e.g. as a representative, legal advisor or decision taker of the contested decision or as an assistant or member of the appeal in dispute.
- 4.3. In the circumstances defined in para 4.2., the mediator may only be designated or continue to act if the parties have been informed in writing about the circumstances in question, the parties express in writing that they wish to proceed with mediation using the mediator concerned and the mediator is certain of being able to carry out the mediation in fully independent manner that ensures complete impartiality.
- 4.4. The mediator may not be involved in any further proceedings of the case in issue or in any related case.
- 4.5. The mediator must all times act with impartiality towards the parties and be committed to serve all parties equally.
- 4.6. The mediator may be assisted by a member of the Office's staff, including a co-mediator, subject to the Decision on Mediation and the present Rules being observed and the prior approval of the parties.
7. The mediator is responsible for the conduct of the mediation in accordance with the Decision on Mediation and the present Rules.

5 - Role of the mediator

- 5.1 The mediator's role is to assist the parties in reaching a voluntary and mutually satisfactory settlement. The mediator has no authority to settle the case. It is not the role of the mediator to give legal advice or to represent any party.
- 5.2. As soon as possible after being appointed, the mediator shall contact the parties and organise a mediation meeting. The mediation meeting should, in principle, take place in Alicante or Brussels.
- 5.3. Unless otherwise agreed by the parties and the mediator, the mediation proceedings are conducted in the language of the appeal proceedings.
- 5.4. In preparation of the mediation, the mediator shall
 - a) ensure that the parties to the mediation understand the characteristics of the mediation process, the role of the mediator and their own role,
 - b) confirm receipt of and read any documentation provided by the parties,
 - c) attend all meetings with any or all of the parties preceding the mediation in person at OHIM's premises or by telephone, video conferences or other means if requested by the parties,
 - d) ensure that the parties sign a mediation agreement and that all attendees undertake to sign a confidentiality agreement before commencement of the mediation.

- 5.5 The mediator shall guide the mediation process. He/she may give progress reports after each stage of mediation to facilitate communication between the parties and help the parties to have an overall view of the situation of the pending proceedings. The different stages of mediation are:
- a) the opening statement;
 - b) the compilation of facts and an exchange of views;
 - c) the search for business interests;
 - d) the selection and evaluation of possible solutions;
 - e) closure through a written agreement.
- 5.6. The mediator may meet and communicate separately with each party provided that the information exchanged shall not be disclosed to the other party without the authorisation of the party giving such information.

6 - Participation of the parties

- 6.1. Each party may provide the mediator with a summary of the background to the dispute and its interests before the mediation takes place.
- 6.2. The attendees shall have full authority to settle the dispute. Any person that may need to be consulted during the mediation shall be available.
- 6.3. Each party shall cooperate with the mediator to advance the mediation with the view to reaching an amicable settlement of the dispute as soon as possible.

7 - Confidentiality

- 7.1. The discussions and negotiations conducted within the framework of mediation shall be confidential for all persons involved in the mediation, in particular the mediator, the parties and their representatives as set out in Article 5 of the Decision on Mediation.
- 7.2. All information is confidential and therefore without prejudice to any party's legal position.
- 7.3. No recording or transcript of the mediation shall be made. The mediator shall return, destroy or delete materials obtained for the purpose of mediation after termination of the Mediation, without retaining any copy thereof.
- 7.4. The parties and the mediator shall be responsible for ensuring that all of their respective colleagues, representatives and advisors are bound by appropriate undertakings of confidentiality and shall take appropriate measures to prohibit the dissemination of any information relating to the mediation by such persons.
- 7.5. Any person participating in the mediation shall sign an appropriate confidentiality agreement.

8 - Termination of Mediation

- 8.1. The appeal proceedings are suspended in relation to the dispute that is the subject-matter of mediation, until the date of termination of the mediation.
- 8.2. Mediation shall be terminated:
 - a) by signing a settlement agreement covering the issues in dispute between the parties either partially or totally;
 - b) by the decision of the mediator if, despite undertaking efforts, mediation is unlikely to lead to an amicable settlement of the dispute;
 - c) by a written declaration from any party who may opt-out at any time after the commencement of the mediation and before signing any settlement agreement.
- 8.3. Upon termination of the mediation, the mediator shall inform the Board of Appeal through its Registry in a written note indicating the exact date on which the mediation terminated and whether mediation resulted in a settlement of the dispute.
- 8.4. Where appropriate, the parties shall confirm, in writing, to the Board of Appeal through its Registry, any public declarations that have occurred, such as limitations or a withdrawal, related to the suspended proceedings.
- 8.5. Where appropriate, the Board of Appeal shall resume the appeal proceedings immediately and automatically in accordance with Article 2, paragraph 2, of the Decision on Mediation. From the date of resumption of the appeal proceedings, time shall restart, without refreshing the time-limits running at the date of suspension.
- 8.6. When mediation results in a full settlement of the dispute, the competent Board shall take a decision closing the appeal proceedings in accordance with Article 4, paragraph 2, of the Decision on Mediation.
- 8.7. The Registry of the Boards of Appeal shall not act as a repository authority for the settlement agreements signed by the parties.

9 - Administrative charge

- 9.1. Unless otherwise provided for in a decision of the President of the Office, mediation is free of charge.
- 9.2. Whenever applicable, if the parties have failed to pay the administrative charge, the mediation meeting cannot take place and the appeal proceedings shall resume automatically.
- 9.3. Unless otherwise decided by the parties, the mediation charges, where applicable, shall be borne in equal shares by the parties.
- 9.4. The mediator shall not be entitled to any fee.

10 - Costs

10.1. The mediation agreement shall contain a provision on the costs of the mediation proceedings.

10.2 In the absence of a provision on mediation costs the following rules apply:

- a) Each party bears its own costs related to mediation, such as travelling costs, representative's fees. In no case can the OHIM be made liable for any costs.
- b) Where mediation takes place in Brussels, each party pays half of the administrative charge payable to the OHIM, that is EUR 375 each. That charge must be paid in full before the mediation can take place.
- c) The costs are separate from the OHIM proceedings or any other subsequent court proceedings and may not be recovered from the other party, in the event that the Dispute is not settled by the Mediation.

11 - Exclusion of Liability

The mediator or the Office shall not be liable for any outcome in relation to mediation conducted under the present rules, nor shall they be liable for the legality and enforceability of the settlement agreement.

12 - List of mediators

Whenever necessary the Presidium shall consider reviewing and updating the list of mediators and take the necessary measures to make it publicly available.

Alicante, July 2013