

RULES ON MEDIATION

THE PRESIDIUM OF THE BOARDS OF APPEAL

Having regard to its Decision No 2011-1 of 14 April 2011 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. 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.

2.2 The parties are free to appoint a mediator from the list established by the Presidium of the Boards of Appeal. The designated mediator may accept, or not, the appointment in accordance with Article 3.2 of the Decision on Mediation.

2.3 The parties may ask for the assistance of the Registry of the Boards of Appeal to facilitate the selection of a mediator.

2.4 Once the mediator is appointed, the parties shall communicate with the Office through the mediator.

2.5. If the parties wish to commence mediation they shall submit a joint request to the Boards of Appeal indicating that they agree to seek an amicable settlement of their case with the assistance of a mediator.

2.6. The joint request shall contain:

- a) the reference number attributed to their appeal;
- b) the name of the appointed mediator;
- c) a request for the suspension of the appeal proceedings.

2.7 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 an identical content. The Boards of Appeal recommend use of the form proposed by the Office.

2.8. Upon reception of the joint request for mediation, the mediator shall, through the Registry, immediately inform the Board in charge of the case concerned.

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

4.1. The mediator may be assisted by a member of the Office's staff subject to the previous approval of the parties.

4.2. The mediator is responsible for the conduct of the mediation in accordance with the Decision on Mediation and the present rules.

5 - Participation of the parties

5.1. As soon as possible after being appointed, the mediator shall contact the parties and organise a mediation meeting in relation to the dispute submitted in which the parties shall participate with authorized powers to take decisions.

5.2. The mediation meeting should, in principle, take place at the Office's premises in Alicante or Brussels.

5.3. Each party shall cooperate with the mediator to advance the mediation with the view of reaching an amicable settlement of the dispute as soon as possible.

5.4. Unless otherwise agreed by the parties and the mediator, the mediation proceedings are conducted in the language of the appeal proceedings.

6 - Role of the mediator

6.1. 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.

6.2. 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.

6.3. 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 the information.

7 - Confidentiality

7.1. All parties involved in the mediation as well as the mediator shall respect the confidentiality of the mediation. Any person participating in the mediation shall sign an appropriate confidentiality agreement.

7.2. No opinion expressed, suggestion or concession made, proposal or document put forward, for the purpose of the amicable settlement shall be communicated to the Board

or the Office or used as evidence by the parties in the appeal proceedings or any other proceedings.

7.3. No record of any kind shall be made of the mediation meetings.

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 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 - Administration 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 settlement agreement shall contain a provision on the costs of the mediation proceedings.

10.2 In the absence of a provision on mediation costs each party shall bear its own mediation costs.

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, 16 June 2011