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Mediation in Europe: The OHIM Model

Mediation service at OHIM

The Office for Harmonization in the Internal Market (OHIM) offers a mediation service for *inter partes* proceedings during the appeal phase, thus 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.

“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.

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.

The request for mediation proceedings may be presented at any time following the lodging of an appeal.

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

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.

The mediator

The mediator’s role is to assist the parties in reaching a voluntary and mutually satisfactory settlement. It is not the role of the mediator to give legal advice or to represent any party.

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 them to have an overall view of the situation of the pending proceedings.

Phases of Mediation

The Mediation phases may be summarized as follows:

- Preparation: The mediator contacts the parties;
- Opening: Brief joint session;
- Exploration: Exploration of the parties’ interests through individual sessions with each party (caucusing);
- Bargaining: Search for solutions through individual or joint sessions;
- Concluding: If the mediation leads to a positive outcome then the guidelines for a settlement agreement may be drafted.

The discussions and negotiations conducted within the framework of mediation shall be confidential.

Termination of mediation

Mediation shall be terminated: a) by signing a settlement agreement covering the issues in dispute (either partially or totally) between the parties 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.

If mediation is held in Alicante it will be free of charge. However, in case mediation takes place in the Office premises in Brussels, a one-off fee of EUR 750 is charged.

The mediation agreement can also be cross-border, thus allowing to extend the agreement to different countries.



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