



EUIPO

EUROPEAN UNION
INTELLECTUAL PROPERTY OFFICE

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- EUIPO Boards of Appeal Alternative Dispute Resolution Services (ADRS) ▪

■ **The Alternative Dispute Resolution Service (ADRS)** is a modern IP dispute resolution hub that offers a full spectrum of ADR tools to EU business and in particular SMEs which offers its services under the authority of the EUIPO Boards of Appeal. The ADRS offers mediation, conciliation, assisted negotiation and expert determination, which may be used in combination with existing ADR instruments or separately. A new service – early neutral evaluation, is planned to be introduced in 2021. In addition, in the wake of the COVID-19 crisis, all these services are now offered online and have been extended to the first instance of the Office for the benefit of SMEs only ([Effective Dispute Resolution \(EDR\) SME COVID-19 special service](#)).



■ THE MEDIATION AT THE EUIPO BOARDS OF APPEAL

The mediation in the Boards of Appeal is introduced to better serve companies and SMEs, and to offer them to more effectively resolve disputes. EU IP litigation can be time-consuming and costly. Management time must be diverted to administering ongoing legal proceedings, instead of concentrating on business concerns. Mediation, as an interest-based, rather than a rights-based process, offers another approach, and reflects EUIPO's commitment to providing a quality service. Putting the needs of the parties at the centre of the process, mediation provides a cost-effective and tailored mechanism for resolving disputes.



■ **Mediation** is a process in which the two 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, the interest-based not rights-based process, the voluntary participation of the parties, the flexibility and confidentiality of the proceedings and the autonomy and attendance of all parties.

■ Settlement agreements resulting from mediation are more likely to preserve an amicable and sustainable relationship between the parties. These benefits are even more pronounced in cross-border contexts, where global packages can be negotiated and multiple litigation avoided.

■ The BoA EUIPO and the Shanghai Commercial Mediation Centre (SCMC) have established a co-mediation instrument. This instrument provides an efficient and convenient way to settle disputes between enterprises in Europe and China in the field of intellectual property. ([International Commercial Intellectual Property Co-Mediation Rules European Union Intellectual Property Office Boards of Appeal \(EUIPO BoA\) & Shanghai Commercial Mediation Center \(SCM\)](#)).



- The mediator, together with the parties, will then attempt to identify common ground and business interests that may be explored in order to settle the dispute through reaching agreement between parties.
- 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.
- The mediator may meet and communicate separately with each party provided that the information exchanged is not be disclosed to the other party without the authorisation of the party giving such information.

■ THE OTHER ADR MECHANISMS AT THE EUIPO BOARDS OF APPEAL

- **Conciliation:** A process in which a conciliator, once appointed by the parties, suggests possible solutions to the dispute. These proposals will be discussed, negotiated and fine-tuned with the parties. ([Decision No 2014-2 of the Presidium of the Boards of Appeal of 31 January 2014 on the friendly settlement of disputes by the competent Board as amended on 1 July 2020](#) (“Decision on Conciliation”).
- **Assisted negotiation:** A process in which a facilitator can support an unrepresented SME by coaching on strategy ‘in the shadows’ but without that facilitator engaging in any direct negotiations with another party to reach an amicable agreement. ([Decision 2020-4 of the Presidium of the Boards of Appeal of 17 June 2020 on Assisted Negotiation](#) (“Decision and Rules on Assisted Negotiation”).
- **Expert determination:** A process in which an expert appointed by the parties gives a legal, commercial or technical binding or non-binding opinion on the matters that have been submitted for determination, at any stage of a mediation or any other ADR process related to proceedings before the EUIPO. ([Decision 2020-3 of the Presidium of the Boards of Appeal of 9 June 2020 on Expert Determination](#) (“Decision on Expert Determination”).



1. WHAT KIND OF MATTER CAN I SUBMIT TO ADR TOOLS BEFORE THE EUIPO?

- European Union trade mark or Community design matters in inter partes proceedings on-going at the EUIPO.
- The subject matter of ADR may, however, go beyond the scope of EUIPO appeal proceedings and embrace parallel trade mark, design or other IP rights related disputes between the same parties.
- The BoA EUIPO and the Shanghai Commercial Mediation Centre (SCMC) have established a co-mediation mechanism. This mechanism provides an efficient and convenient way to settle disputes between enterprises in Europe and China in the field of intellectual property. ([International Commercial Intellectual Property Co-Mediation Rules European Union Intellectual Property Office Boards of Appeal \(EUIPO BoA\) & Shanghai Commercial Mediation Center \(SCM\)](#)).





2. WHO CAN USE EUIPO ADR TOOLS AND IN WHAT CIRCUMSTANCES?

The decision to utilize EUIPO ADR tools is purely voluntary and consensual. The parties may request suspension of any ongoing inter partes proceedings before the EUIPO.

- **Mediation and conciliation:** Are particularly useful for parties involved in one or more inter partes proceedings before the EUIPO and/or, as the case may be, before other IP Offices or Courts.
- **Assisted negotiation:** Is particularly aimed at unrepresented SME (s) involved in one or more inter partes proceedings before the EUIPO and/or, as the case may be, before other IP Offices or Courts and who want coaching or strategy support when carrying out their own negotiations.
- **Expert determination:** May be especially useful to parties who are already in a mediation or conciliation process before the EUIPO and find themselves at an impasse due to an irreconcilable difference of opinion on a legal, commercial or technical matter. Expert Determination may also be suggested upon the initiative of the mediator or one of the parties to the mediation held before the EUIPO.

Parties willing to engage in any EUIPO ADR process may sign a request form and additionally for mediation and expert determination an agreement model.

- **Mediation:** [Joint request model](#) and [model agreement](#)
- **Conciliation:** [Request form and model agreement](#)
- **Assisted negotiation:** [Request form](#)
- **Expert determination:** [Request form](#) and [model agreement](#)

■ 3. WHO ARE THE EUIPO ADR PROFESSIONALS?

- A qualified member of the EUIPO's staff who is requested to conduct an EUIPO ADR process in an effective, neutral, impartial and competent way.
- EUIPO ADR professionals may not be involved as an examiner, member of the Opposition Divisions, the Cancellation Divisions, the Invalidation Divisions or the Boards of Appeal in any further proceedings of the case at issue.
- **Mediation:** [More than 20 accredited mediators](#).
- **Assisted negotiation and expert determination:** 23 qualified staff members of the Office to act as Experts and Facilitators. ([Decision 2020-5 of the Presidium of the Boards of Appeal of 1 July 2020 on Experts and Facilitators](#) ("Decision on Experts and Facilitators")).



4. ARE EUIPO ADR PROCESSES CONFIDENTIAL? ■

- EUIPO ADR process are strictly confidential for parties. Before initiating ADR process, the parties, or party involved, must complete and submit a confidentiality agreement to the EUIPO.
- All persons involved in any EUIPO ADR process are obliged to keep confidential any information obtained during and in connection with that process. 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 or both parties to the underlying dispute expressly waive confidentiality.

5. WHAT HAPPENS IF EUIPO ADR DO NOT SUCCEED? ■

- **Mediation and conciliation:** Parties are free to withdraw from the EUIPO ADR process at any time and cannot be forced to reach a settlement agreement. The ADR process can also be terminated by the mediator or conciliator so deciding. This could occur where, despite undertaking best efforts, it has become apparent that mediation or conciliation is unlikely to lead to an amicable settlement of the dispute.
- **Assisted negotiation:** Where the Assisted Negotiation is ongoing or has been terminated, the Appointing parties remain fully responsible for ensuring that the appropriate procedural requests are made in the underlying proceedings before the EUIPO.
- **Expert determination:** Where an expert determination is given, the parties may decide to withdraw from, or to continue with the process in order to try to reach an amicable settlement.

6. WHAT HAPPENS IF EUIPO ADR IS SUCCESSFUL?

- **Mediation and conciliation:** If mediation or conciliation are 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. The EUIPO also offers a pro bono matching service to support those who cannot afford a lawyer.
- **Assisted negotiation:** Where Assisted Negotiation results in a full settlement of the dispute, parties should communicate the settlement agreement to the EUIPO so that the competent instance of the EUIPO dealing with the case can take a decision closing the proceedings.
- **Expert determination:** Where an expert determination is given, parties can continue with the underlying EUIPO ADR process and thus have increased chances of finding a successful solution.



7. HOW MUCH DOES EUIPO ADR PROCESS COST?

- All EUIPO ADR processes are now offered online at no additional cost.
- Face-to-face mediations held in Alicante also incur no additional fees. Where mediation takes place in the Office premises in Brussels, a one-off fee of EUR 750 is charged to cover the traveling and accommodation expenses of the EUIPO mediator.
- In expert determination, the parties are free to appoint an internal EUIPO Expert or nominate an external Expert that they consider having sufficient knowledge of the subject matter at issue. When the Expert chosen by the parties is not a staff member of the Office, that person's remuneration is the responsibility of the parties and must be agreed upon between them in writing before making any appointment.

8. IN WHAT LANGUAGE WILL THE ADR BE HELD?

In principle, the EUIPO ADR process will be held in the language of the appeal proceedings. However, the parties are free to agree jointly on any other language (subject to the EUIPO ADR Service staff being able to offer that language). Currently ADR processes at the EUIPO can be carried out in 9 languages: BG, DE, EL, EN, ES, FR, IT, NL, PL).



PRACTICAL INFORMATION



<https://euipo.europa.eu/ohimportal/en/mediation>

Find out more:





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