

Version 11; Date: 22.4.2025

Mediation Rules

The Administrative Committee of the Unified Patent Court,
Having regard to Article 35 of the Agreement on a Unified Patent Court and Rule 10, paragraph 2 of the
Rules of Operation of the Mediation and Arbitration Centre
Has adopted the following Mediation Rules:

SECTION 1 GENERAL PROVISIONS

Article 1 Definitions

In these Rules:

- "UPC" means Unified Patent Court;
- "UPCA" means Unified Patent Court Agreement;
- "Centre" means the Patent Mediation and Arbitration Centre;
- "Rules" means the Rules of Mediation of the Centre;
- "Proceedings" means mediation proceedings under these Rules;
- "Mediation" means a structured process, however named or referred to, 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;
- "ADR" means appropriate dispute resolution proceedings as offered by the Centre;
- "RoP" means Rules of Procedure of the UPC;
- "Request" means the request for mediation under the Rules;
- "Applicant" means any party wishing to have recourse to Mediation under these Rules and submitting a Request;
- "Mediation Agreement" means an agreement by the parties to submit to Mediation all or certain disputes which have arisen, or which may arise between them; a Mediation Agreement may be in the form of a mediation clause in a contract or in the form of a separate contract;
- "Neutral" means any impartial and independent individual/person accredited under any of the applicable rules of the Centre who conducts dispute resolution proceedings;
- "Mediator" means a neutral, impartial and independent person appointed under the Rules who assists parties in reaching a dispute resolution in the context of Proceedings;

- "Standard" means in particular a document that provides requirements, specifications, guidelines or characteristics for products, processes, interfaces and services, for general and repeated use, with the objective of achieving the optimum degree of order in a particular context;
- "Standard Essential Patent (SEP)" means in particular a patent that includes one or more patent claims the practice of which is required for compliance with a Standard;
- "FRAND" means fair, reasonable and non-discriminatory terms and conditions of a license for a SEP, including any variation of a licensing undertaking made in the context of Standard development activities;
- "FRAND dispute" means in particular a dispute involving a SEP and/or a patent alleged to be standard essential that is to be licensed under FRAND terms and conditions, including any related matter of the dispute.

Unless the contrary intention appears, words in the singular include the plural and vice versa.

Article 2 The scope of application

1. The mediation service of the Centre offers support in the settlement of disputes relating to European patents, European patents with unitary effect and supplementary protection certificates for which UPC is competent pursuant Article 32 of the UPCA, and related disputes.
2. Pursuant to Rule 365 and Rule 11.2 of the RoP, the UPC shall, if requested by the parties, by decision confirm the terms of any settlement or arbitral award by consent, reached using the facilities of the Centre, including a term which obliges the patent owner to limit, surrender or agree to the revocation of a patent or not to assert it against the other party and/or third parties.
3. The parties may agree that any other disposable right or obligation factually or legally linked to the dispute be included in the Mediation.
4. A Request can be made by the parties to a dispute or by one of the parties with the express consent of the other parties or following a recommendation by the UPC or other competent authorities to settle the dispute.
5. The Centre is the only body authorized to administer Proceedings.

SECTION 2 REFERRAL TO ADR BY THE UPC

Article 3 Information on Mediation and other forms of ADR

The parties to litigation at the UPC will be provided and served with the written information of available ADR proceedings and with an invitation to consider ADR as a means of settling the dispute conducted by a Neutral.

Article 4 ADR information conference

1. Any party to pending litigation at the UPC may file a notice applying for an ADR information session.
2. The notice shall be delivered to the Centre by email or other means of electronic communication

that provide a record thereof, including, but not limited to, by a dedicated ADR online platform of the Centre, unless a party decides to use also expedited postal or courier service.

3. If the notice is not submitted to the Centre by all the parties jointly, the Centre shall invite the other party to participate in the ADR information session and allow it 15 days from receipt of Centre's letter to respond on the invitation to the Centre by electronic means.
4. If all the parties to a dispute agree to attend the ADR information session, the Centre will inform the UPC of that fact and select a Neutral to conduct an ADR information session. It will schedule the session at the time designated by the Centre upon prior consultation with the parties, their counsel and with the selected Neutral.
5. The ADR information session is conducted by a Neutral, appointed by the Centre, in the presence of the parties and/or their representative(s), having authority to negotiate and conclude a mediated settlement agreement.
6. The ADR information session shall be confidential, free of charge for the parties, and conducted by videoconference or other online tools to verify the authority of the participants according to paragraph 5 above and gather them together before the Neutral.
7. During or after the ADR information session the parties may agree to refer their dispute to appropriate ADR proceedings and provide their written consent to appoint as a Neutral for the ADR proceedings the Neutral who conducted the ADR information session.
8. With the agreement of the parties, the Neutral may be appointed as Mediator according to Article 10 and may be able to start Proceedings immediately. The Mediator shall inform the Centre of the appointment without delay.

Article 5 Referral to selected ADR proceedings upon consent of the parties

If the UPC orders a stay of litigation proceedings upon joint request by the parties because of the referral of their dispute to ADR proceedings provided by the Centre, the Centre shall, upon termination of the ADR proceedings, and on written request by the UPC, inform the UPC whether the terminated Proceedings has settled or not, without revealing the details of the mediated settlement, or the reasons why the case has not settled.

SECTION 3 SELF-REFERRAL TO ADR BY THE PARTIES

Article 6 The Request and the registration fee

1. A party to a Mediation Agreement wishing to commence Proceedings shall submit to the Centre and to the other parties to the dispute a Request in writing, preferably using the form available on the Centre's website. The Request shall be delivered by email or other means of electronic communication that provide a record of delivery, including but not limited to, by dedicated mediation online platform of the Centre, unless a party decides to use also expedited postal or courier services.
2. The Request shall set out in sufficient particularity:

- a) the request that the dispute be referred to mediation under the Rules;
 - b) the names in full, addresses, telephone numbers, e-mail addresses or any other contact details of the parties and their representatives and/or assistants, if any;
 - c) a succinct summary of the facts giving rise to the dispute, including an indication of the intellectual property rights involved and the nature of any technology involved and, if possible, an assessment of its value;
 - d) where appropriate, the UPC case number, or alternatively an indication that the litigation is not currently pending at the UPC;
 - e) a statement as to whether the parties have already agreed on mediation and, if so, annexing a copy of the Mediation Agreement;
 - f) any agreement as to the time limits for conducting the Mediation; the language of the Mediation; the proposed location of any physical meetings, if required; and, if appropriate, the details of a Mediator jointly nominated by the parties; or, alternatively, a request that the Centre nominates a suitable Mediator;
 - g) any document or information which the Applicant considers relevant to the dispute.
3. The Request will not be taken into consideration unless it is accompanied by the payment of the registration fee for opening the matter, calculated in accordance with the scale of fees in effect on the date of the receipt of the Request by the Centre. The registration fee shall not be refundable.
 4. If the Applicant fails to comply with either of the requirements under paragraphs (2) or (3) above, the Centre may set a time limit, which may be subject to reasonable extension, within which the Applicant must complete the Request. If the Request is not completed within the extended time limit, the Applicant shall be deemed to have withdrawn the Request, without prejudice to their right to submit another Request at a later date.

Article 7 Response to the Request

1. If the Request is not submitted to the Centre by all the parties jointly, the Centre shall inform the other parties about the Request and allow them 15 calendar days from receipt of the Centre's letter to respond to the Centre and to the Applicant by electronic means.
2. Article 6 applies mutatis mutandis.
3. After the response has been received, a Mediator may be appointed in accordance with Article 10:
 - a) where a Mediation Agreement exists, as soon as the response of the other party has been received, or once the time limit in paragraph 1 above has expired;
 - b) in the absence of a Mediation Agreement, if the other party or parties so agree(s).

Article 8 Assistance of the Centre to the parties

1. The Centre may assist the parties in considering the Request and drafting the Mediation Agreement.
2. To this end, and upon request by the parties, the Centre may appoint a Neutral to assist the parties in considering the Request and drafting the Mediation Agreement. The Neutral appointed by the Centre may act as a Mediator in the subsequent Proceedings, provided all parties agree.

SECTION 4 MEDIATION

Article 9 The date of the commencement of Proceedings

1. The date of commencement of the Mediation upon Mediation Agreement shall be the date on which the Centre receives the complete Request, in accordance with Article 6, from one or all the parties.
2. The Centre shall inform the parties by electronic means of receipt of the Request, the response to the Request and of the date of the commencement of any Mediation.

Article 10 Appointment of the Mediator

1. The parties may agree to nominate one or more Mediators from the List of Mediators at the Centre or any other Mediator not on that List. When appropriate, the Centre may at any point recommend the parties appoint one or more co-Mediators.
2. Unless the parties have otherwise agreed on the choice of a Mediator, or on another procedure for appointing the Mediator, the appointment shall take place in accordance with paragraphs (a) to (c) below:
 - a) The Centre will call on the parties to select a Mediator from a shortlist of Mediators provided by the Centre. The shortlist will include at least three candidates listed in alphabetical order who have been selected based on the basis of their qualifications and/or experience relevant to the dispute. The list shall include a statement of each candidate's qualifications.
 - b) Within 15 days of the provision of the shortlist, the parties shall agree on the appointment of the Mediator from the shortlist. Alternatively, the parties may appoint a Mediator who is on the Centre's longlist of Mediators, or who is not on either list. The Centre shall accept the proposed Mediator providing he or she fulfils the requirements for Mediators laid down in the Regulation on Selection Criteria for Mediators at the Centre.
 - c) If the parties cannot reach an agreement about the person of the Mediator, or if the suggested candidate Mediator does not fulfil the requirements for a Mediator, the authorised person of the Centre shall appoint a Mediator, following consulting with the parties. This appointment should respect the requirements set out by the parties and take into account the Mediator's relevant qualifications or attributes, including but not limited to nationality, language skills, training, qualifications and experience; and the prospective Mediator's availability and ability to conduct the mediation in accordance with the Rules.

Article 11 Role and duty of the Mediator

1. The role of the Mediator is to facilitate settlement discussions between the parties as a neutral,

impartial and independent third person. The Mediator is devoid of powers of imposition upon the parties to the Proceedings. The Mediator may not previously have advised or represented any of the parties to the dispute on legal issues which are or have been the subject matter of the Proceedings, unless the parties provide their informed consent in writing.

2. The Mediator shall, by accepting the nomination, be deemed to be able to invest sufficient time to enable Proceedings to be conducted expeditiously. Where the Mediator is for whatever reason prevented from fulfilling his or her duties or fails to perform his or her functions in an adequate manner, upon the request of either party the Centre shall revoke the mandate of the Mediator and appoint a substitute Mediator according to Article 10 paragraph 2(c).
3. The Mediator shall adhere to the principles of the Code of Conduct for Mediators at the Centre.

Article 12 Representation and assistance

1. Each party may identify a representative of that party who is authorized to settle a dispute on behalf of that party and who shall attend meetings and communicate with the other parties and with the Mediator throughout the Proceedings.
2. Each party may be assisted in their meetings with the Mediator.
3. Immediately after the appointment of the Mediator, each party shall communicate the contact information of the persons authorized to represent and/or assist the parties to the Mediator, the Centre and other parties.

Article 13 Place of Proceedings

1. Unless otherwise agreed by the parties, Proceedings will be conducted by using electronic means and other information and communication technology.
2. The parties may agree on the place of the Proceedings for the purpose of any necessary physical meeting. In the absence of an agreement of the parties, the Centre shall, after consultation with the parties, decide on the place of the Proceedings having regard to the circumstances of the case and the organization of the Centre. The Mediator and the parties may meet at any location and in any form the Mediator considers appropriate.

Article 14 Language of the Mediation

1. The parties shall use their best endeavours to agree on the language of the Proceedings.
2. In the absence of an agreement, the language of the Mediation shall be the language which the Centre considers is most closely related to the dispute.

Article 15 Conduct of the Proceedings

1. The Proceedings shall be conducted in the manner agreed by the parties. If, and to the extent that, the parties have not made such an agreement, the Mediator shall, in accordance with these Rules and after consultation with the parties, determine the manner in which the Proceedings shall be

conducted. Appropriate use will be made of videoconference or other online tools.

2. Each party shall cooperate in good faith with the Mediator throughout the Proceedings.
3. The Mediator shall promote the settlement of the dispute between the parties in an orderly and appropriate manner having regard to the wishes of the parties. The Mediator shall listen and help the parties identify underlying causes of the conflict, the interests and the consequences of an absence of a settlement agreement. The Mediator may make proposals for the resolution of the dispute upon consensual wishes of the parties but shall have no authority to impose a settlement on the parties. The agreement and outcome of the Proceedings are decided by the parties.
4. The Mediator and the parties shall make all effort to reaching an expeditious and efficient resolution of the dispute. They can agree on a meeting agenda and a time schedule. The duration of the Proceedings shall not exceed three months starting from the appointment of the Mediator. This period may be extended by the Centre with the agreement of the Mediator and all the parties. The Centre may terminate the Proceedings on the expiry of a period of twelve months from the date of appointment of the Mediator, following consultation with the Mediator and the parties.
5. The Mediator may meet or communicate with each party separately or with all of them together. The Mediator must disclose to the other party the date of any meeting or the fact of a communication to the other party. In case of a meeting or communication with one party only, the Mediator is allowed to share received information with the other party unless the party giving information explicitly stated that the concerned information is to be kept confidential.

Article 16 Role of Mediator in other proceedings

1. Where the Centre or the Mediator considers that any issues in dispute between the parties are not susceptible to resolution solely through Mediation, the Mediator may propose, for the consideration of the parties, procedures or means for resolving those issues which the Mediator considers are most likely, having regard to the circumstances of the dispute and any business relationship between the parties, to lead to the most efficient, least costly and most productive settlement of those issues. In particular, the Mediator may propose:
 - a) an expert determination of one or more particular issues in dispute;
 - b) an early neutral evaluation;
 - c) a hybrid process (for example, Mediation followed by arbitration; or arbitration followed by Mediation; or some other hybrid combination);
 - d) a binding arbitration for one or more of the issues in dispute;
 - e) a non-binding arbitration;
 - f) any other appropriate dispute resolution process, tailored to the needs of the parties.
2. With the written agreement of the parties, the Centre may provide support for the settlement of a dispute making use of the procedures set out in paragraphs (a) to (f) above, in accordance with the applicable rules of the Centre.

3. The Mediator is not allowed to take over the role of a judge or any other decision-making officer in proceedings relating to a dispute that was or is subject of the Proceedings, or any other dispute arising from or connected with the same legal relationship as the initial dispute.
4. Unless otherwise agreed by the parties in writing, the Mediator shall not act as an arbitrator in respect of a dispute which was or is the subject of Proceedings, or any other dispute arising from or connected with the same legal relationship as the initial dispute.

Article 17 Termination of the Proceedings

1. Proceedings shall fully or in part be terminated:
 - a) by the conclusion of a dispute settlement agreement, effective on the date of that agreement;
 - b) by the expiry of a time limit for the appointment of a Mediator, if the parties do not agree on the appointment of a mediator within 30 days of commencement of Mediation, effective on the date of expiry of the time limit;
 - c) by declaration of the Mediator, after consultation with the parties, to the effect that further efforts at Mediation are no longer justified, effective on the date of declaration;
 - d) by a written declaration of a party to the other party or other parties and the mediator, to the effect that the Proceedings are terminated, effective on the date of the delivery of the declaration to the other party or other parties and the Mediator. If in the Proceedings several parties are participating who are willing to proceed with the Mediation among themselves, the Mediation shall be terminated only for the party that has submitted a declaration.
2. Upon termination of the Proceedings, the Mediator shall promptly send to the Centre a notice in writing that the Proceedings are terminated and shall indicate the date on which, as far as the Mediator is aware, the termination took effect, whether or not the Mediation resulted in a settlement of the dispute; and, if so, whether the settlement was full or partial. The Mediator shall send to the parties a copy of the notice as addressed to the Centre.

Article 18 Request on confirmation of settlement

The parties may, at any time, including prior to the commencement of the Proceeding, agree in writing to request confirmation by the Court of any settlement that may eventually be reached through Mediation.

Article 19 Agreement

The agreement reached through the Proceedings shall be made in writing and signed by or on behalf of the parties. The Mediator shall sign the document if the parties so request. The sole purpose of the signature of the Mediator is to certify that the mediated settlement agreement was reached through the use of the facilities of the Centre.

Article 20 Statute of limitations, temporary waiver of action

1. The parties agree that, to the extent permitted by the applicable law, the period of limitation and prescription shall be suspended for claims that are subject to Proceedings from the date of commencement of Proceedings.

2. The suspension shall cease at the termination of the Proceedings (Article 17 paragraph 1).
3. The parties may expressly undertake not to initiate or actively continue any judicial, arbitral or similar proceedings to a dispute which is subject to the pending Proceedings at the Centre.
4. Initiation or continuation of such proceedings does not in itself constitute a waiver of the Mediation Agreement or a declaration of termination of the Proceedings.
5. The parties are not precluded from applying to the competent court or arbitral tribunal for interim measures of protection.

Article 21 Confidentiality

1. The Centre, its staff, the Mediator, the parties, the parties' counsel, representatives, advisers or assistants and any other persons participating in the Mediation shall respect the confidentiality of the Mediation and may not, unless otherwise agreed in writing by the parties and the Mediator or required by the applicable law or necessary to implement or enforce the settlement agreement, use or disclose to any outside party any information concerning the Mediation. The Centre, the parties or the Mediator shall ensure that each such person sign an appropriate confidentiality declaration prior to taking part in the Proceedings.
2. Unless otherwise agreed by the parties in writing or required by applicable law, the parties shall not introduce or seek to introduce as evidence or to give testimony in any judicial, arbitral or similar proceedings:
 - a) any documents, statements or communications prepared for Mediation exclusively which are submitted or produced by another party or by the Mediator in or for the Proceedings;
 - b) any views expressed, or suggestions made, by any party within the Proceedings with regard to the dispute or the possible settlement of the dispute;
 - c) any admissions made by another party within the Proceedings;
 - d) any views or proposals put forward by the Mediator within the Proceedings;
 - e) the fact that a party had or had not indicated willingness to accept any proposal for a settlement made by the Mediator or the other party.
3. The previous paragraph applies regardless of the form in which information or evidence was presented.
4. Unless required by applicable law, the Mediator and any employee or executive of the Centre shall not give testimony in any judicial, arbitral or similar proceedings concerning any aspect of the Proceedings.

SECTION 5 FRAND Disputes

Article 22 Scope of FRAND dispute referred to Mediation

1. The parties should, with the assistance of the Mediator and/or in accordance with the guidance

provided by a competent court that has referred the dispute or parts thereof to Mediation, define as precisely as possible the scope of the FRAND dispute.

2. The matters raised in mediation may include:
 - a) the SEP(s) in dispute or other patents concerned, such as one or several or a sample of patent(s) from the patent portfolio(s), in which case the parties may agree on the sampling criteria;
 - b) any patents that might be subject to cross-licensing;
 - c) the claims and defences;
 - d) the conduct of the Proceedings in multiple stages;
 - e) any essentiality assessment to be conducted in accordance with the Centre's rules on expert determination;
 - f) the determination of selected licensing terms and conditions;
 - g) the determination on a temporary basis of any selected licencing terms pending determination of final licensing terms by a competent tribunal;
 - h) the determination of the scope of the royalty base and range;
 - i) the methodology for calculating a FRAND royalty rate;
 - j) any application for an order to a competent court, such as an application for an order to produce evidence or an order concerning confidentiality.

Article 23 Expedited Proceedings

To expedite Proceedings and the conclusion of a settlement agreement, the parties may agree to shorten the time limits set out in Article 7 paragraph 1 and Article 10 paragraph 2 and/or to establish time limits for other procedural steps. Time limits may also be shortened and/or established in accordance with the guidance provided by a competent court that has referred the dispute or parts thereof to Mediation.

Article 24 Confidentiality

1. In addition to the provisions laid out in Article 21, FRAND disputes may require a higher level of confidentiality protection.
2. For this purpose, the parties may agree that:
 - a) a confidentiality advisor be appointed to ensures effective confidentiality protection, especially in respect of the possible submission of confidential license agreements or other sensitive information during Proceedings;
 - b) access to confidential information be restricted to a limited number of individuals, which may include named employees of the parties, parties' attorneys or party experts, subject in each case to the recipient being bound by specific confidentiality conditions;

- c) separate non-disclosure agreements be entered into in order to specifically protect against the use or disclosure of confidential information;
- d) in the case of pending judicial proceedings at the competent court, a separate order on confidentiality issued by the competent court be requested.

Article 25 Parallel proceedings

In case only parts of a dispute are referred to Mediation, the parties may agree that any undertaking made under Article 20 does not apply, and Proceedings concerning other parts of the dispute that are not subject to the pending Mediation at the Centre can continue.

SECTION 6 CHARGES AND FEES

Article 26 Advance on costs

1. Upon the appointment of the Mediator, the Centre shall require each party to deposit an equal share of the advance on costs if not otherwise agreed by the parties. The advance on costs shall be equivalent to an estimated amount of such costs in the requested Mediation and shall be determined by the Centre.
2. The Centre will reimburse the Mediator, the Centre itself, interpreters and translators as well as persons participating in the Mediation as experts upon the agreement of the parties from the advance on costs.
3. If necessary, upon request of the Mediator or any party the Centre may decide that additional amounts are to be deposited. If a party fails, within 15 days after a reminder in writing from the Centre, to pay the required deposit, the Proceedings shall be deemed to be terminated. The Centre shall, by notice in writing, inform the parties and the Mediator accordingly and indicate the date of termination.
4. After the termination of Proceedings, the Centre shall return any remaining balance to the parties or require the payment of any amount outstanding and owing from the parties in equal shares for both parties if not otherwise agreed by the parties.

Article 27 Mediation fees and expenses

1. The necessary costs of the Proceedings consist of:
 - a) The non-refundable registration fee;
 - b) The administrative fee;
 - c) The fees of the Mediator;
 - d) Any reasonable travel costs and other expenses incurred by the Mediator(s);
 - e) Any fees and expenses of the Centre incurred in the course of Proceedings;
 - f) Any interpretation and translation costs;

- g) Any costs of expert advice, requested by the Mediator with the agreement of the parties;
 - h) Any Value Added Tax levied upon the costs itemized in (a) to (g) above.
2. The fees of the Centre and of the Mediator shall be fixed in accordance with the schedule of fees of the Centre in force on the date the Centre receives the Request. The schedules of fees will be published by the Centre on its website.
 3. After termination of the Proceedings, the Centre shall determine the amount of necessary costs based on a written request from the Mediator. If the parties or the Mediator disagree with the decision on costs of the Centre, the Director of the Centre shall finally determine the necessary costs following submissions from the parties and/or the Mediator.
 4. Unless the parties agree differently in writing, each party shall pay half of the necessary costs of the Proceedings. Each party shall bear its own costs including legal fees, if any. The parties are jointly and severally liable to the Mediator and the Centre for payment of the costs of the Proceedings.

SECTION 7 FINAL PROVISIONS

Article 28 Applicable rules

1. When a Mediation Agreement provides for Mediation under the Rules, these Rules shall be deemed to form part of that Mediation Agreement.
2. It shall be deemed that the parties agree on the use of these Rules whenever they have agreed, either before or after the dispute has arisen, to resolve all or part of factual or legal issues in Mediation, which is organized or administered by the Centre, even without stating the applicability of these Rules.
3. These Rules apply irrespective of the basis, whether contractual or not, upon which the Mediation is carried out.
4. These Rules as in effect on the date of the commencement of the Proceedings shall apply.
5. If the Mediator and/or the parties have doubts how to apply or interpret the Rules, the Centre shall assist in the application or interpretation.

Article 29 Liability

Save for intentional wrongdoing, the parties waive, to the fullest extent permissible under the applicable law, any claim against the Mediator, the Centre, its organs and employees based on any alleged act or omission in connection with the Proceedings conducted under these Rules.

Article 30 Enforcement

Article 82 of the UPCA shall apply mutatis mutandis to any settlement reached through Proceedings administered by the Centre. For the enforcement of such a settlement, Rule 11.2 of the RoP shall apply.

Article 31 General provisions

1. These Rules will enter into force on [DATE]. They will be applied to any Mediation relating to European patents, European patents with unitary effect and supplementary protection certificates for which UPC is competent pursuant Article 32 of the UPCA and related disputes commenced on or after this date, unless decided differently by the parties; and for any similar Mediation entered into prior to the entry into force of the Rules, if the parties so agree.
2. In matters not expressly provided for in the Rules, the Centre and the Mediator shall act all times in the spirit of the Rules.