

Mediation Rules

The Advisory Committee,

Having regard to Article 35 of the Agreement on a Unified Patent Court and Article 8 of the organizational rules of the Centre,

Has adopted the following mediation rules:

Article 1 Definitions

In these Rules:

- "UPC" means Unified Patent Court
- "Centre" means Patent Mediation and Arbitration Centre
- "Rules" means the rules of mediation of the Patent Mediation and Arbitration Centre
- "Request" means the request for mediation under the Rules
- "Applicant" means any party wishing to have recourse to mediation under the Rules and submit 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.

Words used in the singular include the plural and vice versa, as the context may require.

Article 2 The mediation service

1. The mediation service of the Patent Mediation and Arbitration Centre (hereafter "the Centre") offers support in the settlement of disputes relating to European patents and European patents with unitary effects for which the Unified Patent Court (UPC) is exclusively competent (Article 32 UPC Agreement).
2. Under the Rules, a patent may not be revoked nor limited through mediation.
3. The parties may decide on any other disposable right or obligation factually or legally linked to

the dispute falling within the exclusive competence of the UPC to be included into mediation.

4. The mediation service can be required if a written agreement of the parties allows, on request of one party to the Centre with the expressed consent of the other party, following a recommendation by the UPC to settle the dispute with the Centre which all parties have accepted.

Article 3 The request and the registration fee

1. A request shall be submitted -preferably by electronic means- to the Centre by all parties jointly or by one of them on the basis of the forms available on the Centre's Website.
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;
 - 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) a statement as to whether the parties have already agreed upon mediation and if so annexing a copy of the agreement;
 - e) any agreement as to the time limits for conducting the mediation, as to the language of the mediation, as to the location of any physical meetings or as to the joint nomination of a mediator or to the attribution to the Centre of the nomination of a mediator
 - f) any document or information which the applicant considers relevant to the dispute.
3. The Request is not registered unless it is accompanied by the payment of the administrative fees for opening the matter calculated in accordance with the scale of fees in effect on the date of the receipt of the request for mediation by the Centre. The administrative fee shall not be refundable unless the other party does not agree to mediate. In this case the Centre shall only keep the part of fee which covers the administrative expenses.
4. If the Applicant fails to comply with either of these requirements, the Centre may set a time limit, which may be subject to reasonable extension, within which the Applicant must complete the request. Failing that the Applicant shall be deemed to have withdrawn his request without

prejudice to the right to submit another request at a later date.

Article 4 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 party to participate in mediation proceedings and allow it fifteen (15) days from receipt of Centre's letter to respond on the request to the Centre -preferably by electronic means-.
2. Art. 3 Para 1 to 3 applies mutatis mutandis.
3. After the response has been received the proceeding will be continued so that a Mediator may be appointed in accordance with Article 6:
 - a) Where a mediation agreement exists, as soon as the response of the other party has been received or the time limit in paragraph 1 above has expired;
 - b) in the absence of a mediation agreement, if the other party so agrees.

Article 5 The date of the commencement of the mediation

1. The date of commencement of the mediation shall be the date on which the Centre receives the request.
2. The Centre shall inform the parties -preferably by electronic means- of the receipt of the request, the response to the request and of the date of the commencement of the mediation.

Article 6 Appointment of the Mediator

1. Unless the parties have otherwise agreed on the person of the Mediator or another procedure for appointing the Mediator, the appointment shall take place in accordance with paragraphs a to c
 - a) The Centre call on the parties to appoint a Mediator, informing the parties of the list of mediators of the Centre. The Centre recommends at least five candidates in alphabetical order. The recommendation shall include a statement of each candidate's qualifications.
 - b) Within one month of the recommendation, the parties shall agree on the appointment of the mediator from the short list. They may appoint a mediator who is on the Centre's long list of mediators or who is not on the list. The Centre should accept the appointed mediator in case he fulfils the preconditions for mediators laid down in the Rules.

- c) If the parties cannot reach an agreement or the chosen mediator does not fulfil the preconditions for a mediator, the Centre shall appoint the mediator after consulting with the parties. This appointment should respect the requirements set out by the parties or, in the absence of a prior agreement, consider the specificities of the dispute.

Article 7 Role and duty of the mediator

1. The mediator is a neutral, impartial and independent third person, devoid of powers of imposition upon the parties to the mediation, who assists the parties in their attempt to obtain a final settlement on the subject matter in dispute. In particular he may not legally or otherwise represent or consult the parties or third persons on legal issues, which are or have been the subject matter of the mediation proceedings. The mediator shall disclose to the parties and the Centre all possible conflicts of interests or other circumstances likely to give rise to doubts as to his independence or impartiality without undue delay.
2. A person who assists or represents or who has assisted or represented one of the parties on the same issues before the commencement of the mediation proceedings may not act as a mediator.
3. The mediator shall, by accepting the nomination, be deemed to be able to invest sufficient time to enable the mediation to be conducted expeditiously. Where the mediator is de jure or de facto prevented from fulfilling his duties or fails to perform his functions in an adequate manner, upon the request of either party the Centre shall revoke the mandate of the mediator and appoint substitute mediator according to Article 6 (1) c).
4. The mediator shall adhere to the principles of the European Code of Conduct for Mediators.

Article 8 Representation and assistance

1. Each party may be represented or assisted in their meetings with the mediator.
2. A person who acts as a representative of the party shall have a written mandate to act on her/his behalf.
3. Immediately after the appointment of the Mediator, the names and addresses of persons authorized to represent a party, and -if possible- the names and positions of the persons who will be attending the meetings of the parties with the mediator on behalf of that party, shall be communicated by that party to the other party, the Mediator and the Centre.

Article 9 Place of mediation

The parties shall agree on the place of the mediation. Failing an agreement of the parties the Centre, after consultation with the parties, shall decide on the place of the mediation having regard to the circumstances of the case and the organisation of the Centre. The Mediator and the parties may act at any location and in any form the mediator considers appropriate for deliberations.

Article 10 Language of the mediation

1. The parties shall use their best endeavors to agree on the language of the mediation proceedings.
2. Failing agreement the language of the mediation shall be the language in which the patent was granted by the European Patent Office.

Article 11 Conduct of the mediation

1. The mediation shall be conducted in the manner agreed by the parties. If, and to extent that, the parties have not made such agreement, the Mediator shall, in accordance with these Rules and after consultation with the parties, determine the manner in which the mediation shall be conducted. Each party shall cooperate in good faith with the mediator throughout the mediation proceedings.
2. 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. He shall listen and help the parties identify underlying causes of the conflict, the apparent interests and the consequences of an absence of 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 mediation are decided by the parties.
3. The mediator and the parties shall put all efforts in reaching an expeditious and efficient resolution of the dispute. They can agree on a meeting agenda and a time schedule. The duration of the mediation 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 may terminate the mediation proceedings on the expiry of a period of twelve months from the date of appointment of the Mediator after consultation with the mediator and the parties.
4. The mediator may meet or communicate with each party separately or with all of them together. He has to announce the date of the meeting or the fact of a communication to the other party. In case of a meeting or communication with one party only (caucus) the mediator

shall keep the information he has gathered confidential if the respective party expressly requests him not to make identified information available to the other party.

Article 12 Termination of the mediation

1. The mediation shall fully or in part be terminated:
 - a) by the conclusion of a dispute settlement agreement, on the date of the 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, on the date of expiry;
 - c) by declaration of the mediator, after consultation with the parties, to the effect that further efforts at mediation are no longer justified, on the date of declaration;
 - d) by a written declaration of a party to the other party and the mediator, to the effect that the mediation proceedings are terminated, on the date of the declaration. If in the proceedings several parties participate 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 the request of a party the Centre confirms the termination of the proceedings in writing.
3. Upon termination of the mediation, the Mediator shall promptly send to the Center a notice in writing that the mediation is terminated and shall indicate the date on which it terminated, whether or not the mediation resulted in 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 so addressed to the Centre.

Article 13 Agreement

The agreement reached as a result of mediation proceedings shall be made in writing and signed by the parties. The mediator shall sign the document if the parties so request.

Article 14 Statute of limitations, temporary waiver of action

1. The period of limitation is suspended for such claims that are subject to mediation proceedings from the commencement of the mediation (Article 5 para 1).

2. The suspension shall cease at the termination of the mediation (Article 12 para 1)
3. The parties undertake not to bring or actively continue any judicial, arbitral or similar proceedings to a dispute which is subject to pending mediation at the Centre. The parties are not precluded from applying to the competent court or arbitral Tribunal for interim measures of protection.

Article 15 Confidentiality

1. The Centre, the mediator, the parties, the parties counsels, 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 requested 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 suggest, that each such person sign an appropriate confidentiality undertaking prior to taking part in the mediation.
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 by another party or by the mediator in or for the proceedings, unless they can be obtained independently by the party seeking to produce them;
 - 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 settlement made by the mediator or the other party.
3. Unless required by applicable law or unless all of the parties and the mediator agree otherwise in writing, the mediator shall not give testimony in any judicial, arbitral or similar proceedings concerning any aspect of the mediation proceedings.

Article 16 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 (mediation fees and expenses) 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.
2. The Centre will reimburse the mediator, the parties, the Centre itself and all persons participating in the mediation 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.
4. After the termination of the mediation 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 17 Mediation fees and expenses

1. The necessary mediation fees and expenses consists of
 - a) The registration fee, if not refundable;
 - b) The fees of the mediator;
 - c) Any reasonable travel costs and other expenses incurred by the mediator(s);
 - d) Any fees and expenses of the Centre incurred in the course of the mediation;
 - e) Any value added tax levied upon the costs itemized in a. - d. 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 and changes thereto will be published by the Centre on its website.
3. After termination of the mediation the Centre shall decide upon the amount of necessary costs on the basis of written demand of the mediator unless the parties, according to Rule 11.2 of the UPC Rules of Procedure, agree on costs to be awarded or request the UPC to take a decision on costs. If the parties or mediator disagree with the decision of the Centre, the Director of the Centre shall decide upon the complaint.
4. Unless the parties agree differently in writing each party shall pay half of the necessary costs of the mediation 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 cost of the proceedings.

Article 18 Applicable rules

1. When a Mediation Agreement provides for mediation under the Mediation Rules of the Centre, these Rules shall be deemed to form part of that Mediation Agreement.
2. Unless the parties have agreed otherwise, these Rules as in effect on the date of the commencement of the mediation shall apply.
3. 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 19 Liability

Except in respect of intentional misconduct or gross negligence the mediator, the Centre, its organs and employees shall not be liable to any party for any act or omission in Connection with any mediation conducted under these rules.

Article 20 Enforcement

Art. 82 UPCA shall apply mutatis mutandis to any settlement reached through mediation administered by the Centre. For the enforcement of such settlement Rule 11.2 of the UPC Rules of Procedure applies.

Article 21 General provisions

1. These mediation rules will enter into force on They will be applied to any mediation commenced on or after this date, unless decided differently by the parties.
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.