



EU Mediation Directive and the EUIPO Boards of Appeal ADR Service

Gordon Humphreys | Virtual Meeting | 27 May 2020

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MEDIATION DIRECTIVE 2008/52 , 21/05/2008

- **Objectives**

- ✓ **Encourage** use of **mediation** to facilitate dispute resolution in the EU
- ✓ Helps citizens **avoid** the **worry, time** and **cost** of court **litigation**, and thus enable them to secure their legal rights in an **efficient** way.

- **Application**

- ✓ **Cross-border** disputes in civil and commercial matters (where parties in different Member States)



MEDIATION DIRECTIVE 2008/52 , 21/05/2008

Main substantive rules of Directive:

1. Obliges Member States to **encourage** the **training** of mediators and to ensure **high quality** of mediation.
2. Gives **judges** the **power** to invite disputants to **try mediation** first, where appropriate.
3. Provides for the **enforceability** of mediated settlement agreements where **both parties** so **request** (either through approval by a court or certification by a public notary).
4. Ensures **confidentiality** (through prohibiting any obligation on a mediator to give evidence in court about what took place during mediation).
5. Guarantees that parties retain the possibility of going to court should the mediation fail by **suspending** any **time limits** for bringing a court action.



MEDIATION DIRECTIVE 2008/52 , 21/05/2008

- **Definition of mediation (Art. 3):**

- ✓ A **structured** process
- ✓ in which **disputants**
- ✓ **voluntarily** attempt
- ✓ to reach a **settlement**
- ✓ **assisted** by a mediator.

- Can be **initiated** by:

- ✓ the **parties**
- ✓ suggestion or order of a **court** or
- ✓ Member State **law**.

- **Excludes judicial mediation**

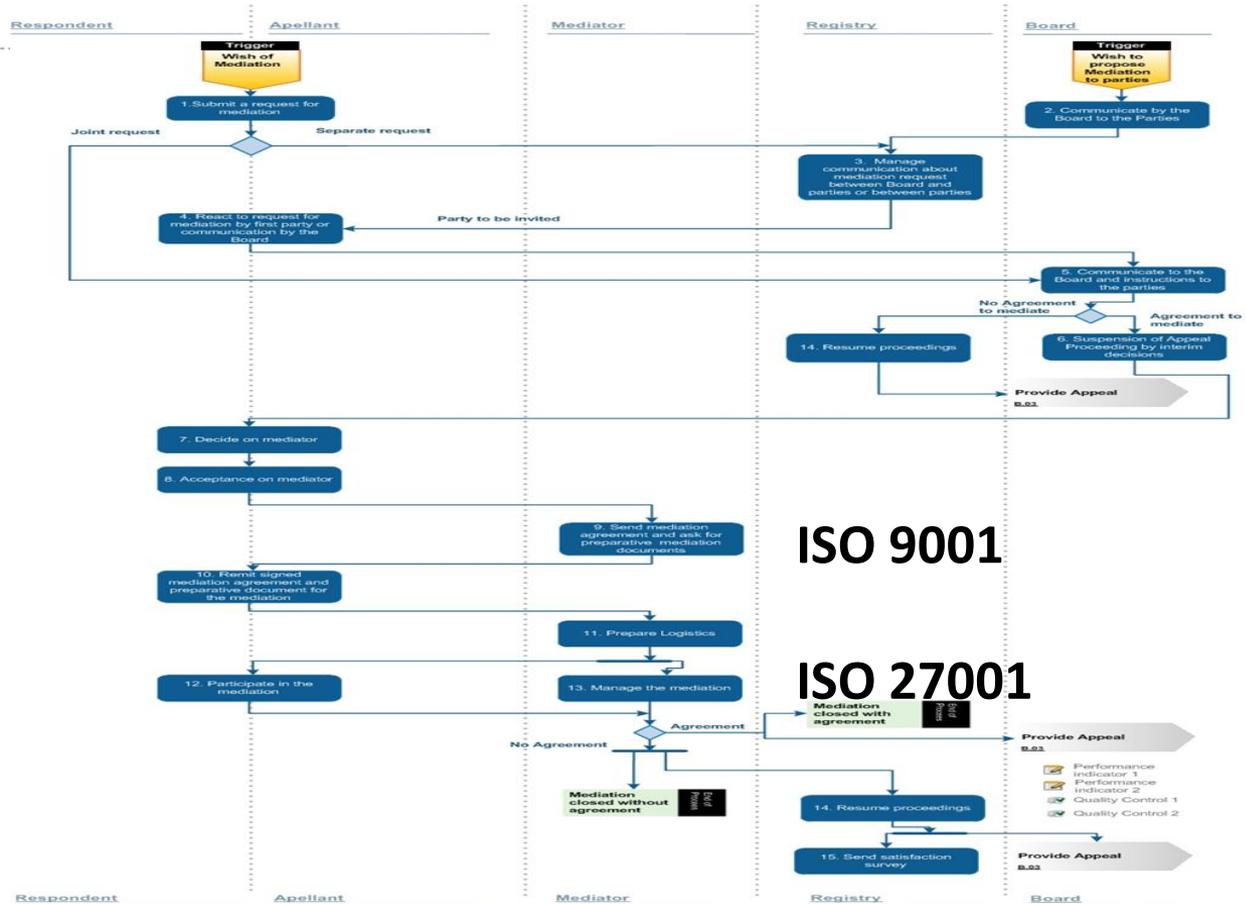


THE GENESIS : CREATION OF THE MEDIATION SERVICE AT EUIPO BOARDS OF APPEAL



- **Inspiration** from EU Mediation Directive and European Code of Conduct for Mediators of the EU Commission
- **Legal anchor** from provisions on EUIPO staff assisting parties in trademark and design cases to reach a friendly settlement
- **Decision** of the ED approving mediation **within the Boards of Appeal** in Dec. 2011
- **Drafting** of mediation agreement, rules on mediation, instructions to parties and FAQ
- **Training** and accreditation of staff with CIArb and CEDR
- **Preparation** through mock mediations, co-mediations and shadowing before handling first mediations





EUIPO Boards of Appeal Mediation

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What?

- ✓ EUIPO inter-partes proceedings (oppositions and cancellations based on relative grounds / invalidities);

When?

- ✓ Only possible before Boards of Appeal (with some exceptions);
- ✓ Need to file notice of appeal, statement of grounds and pay appeal fee;
- ✓ Mediation included in appeal fee.



EUIPO's Boards of Appeal Mediation – Approach

- **Mediator cannot be involved in deciding on the case if the settlement is not possible in mediation**
- **Voluntary and confidential process focusing not only on legal issues but primarily on the parties' business and personal needs and interests;**
- **Possibility to include parallel IP disputes pending between the same parties either within EUIPO or anywhere else in the world.**



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EUIPO's MEDIATION SERVICE – HOW?

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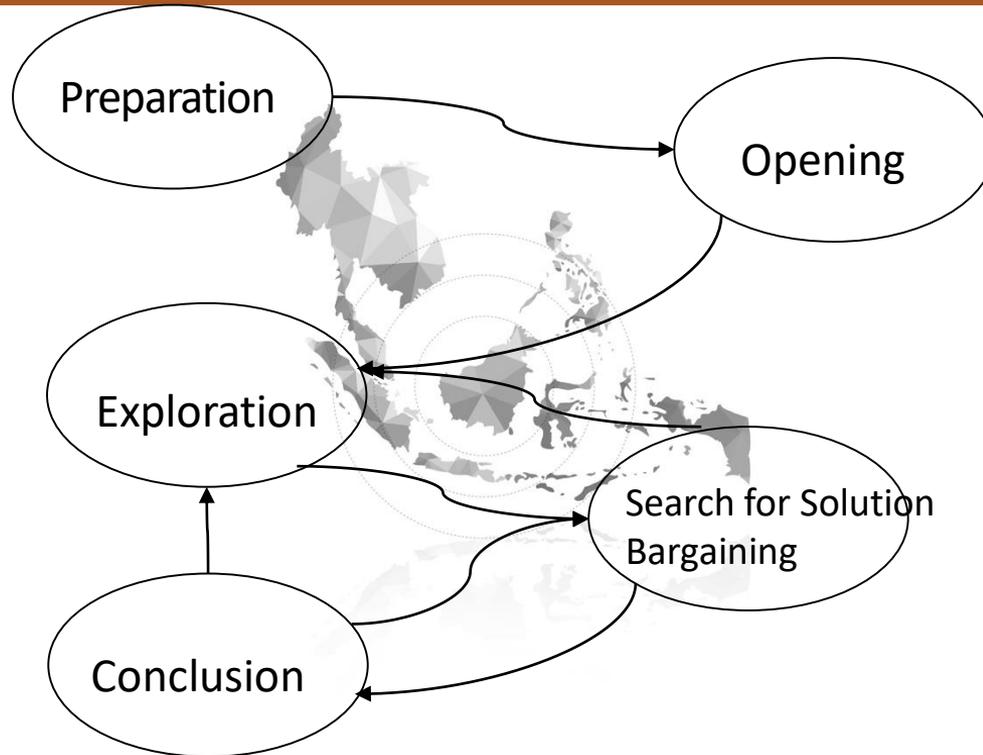


Mod. 0

JOINT REQUEST FORM FOR MEDIATION	
N° of pages (including this one):	
A. Appellant / Mediation applicant	Mediation applicant / Representative reference (not more than 20 characters)
Address / ID Number	
Representative	
Address / ID Number	



STEPS OF THE MEDIATION



Examples of disputes addressed in mediations

- A multinational in the energy sector and a small company doing environmental audits clashed over similar trade marks, with multiple conflicts all over Europe and potential conflicts in the USA
➔ **Result:** The parties settled by the multinational buying the small company's trademark.
- A drinks association and an individual clashed over the individual's allusion to the association's name in his trademark
➔ **Result:** Agreement between the parties whereby the individual ceases to use the mark over a period of time and gets money to rebrand.

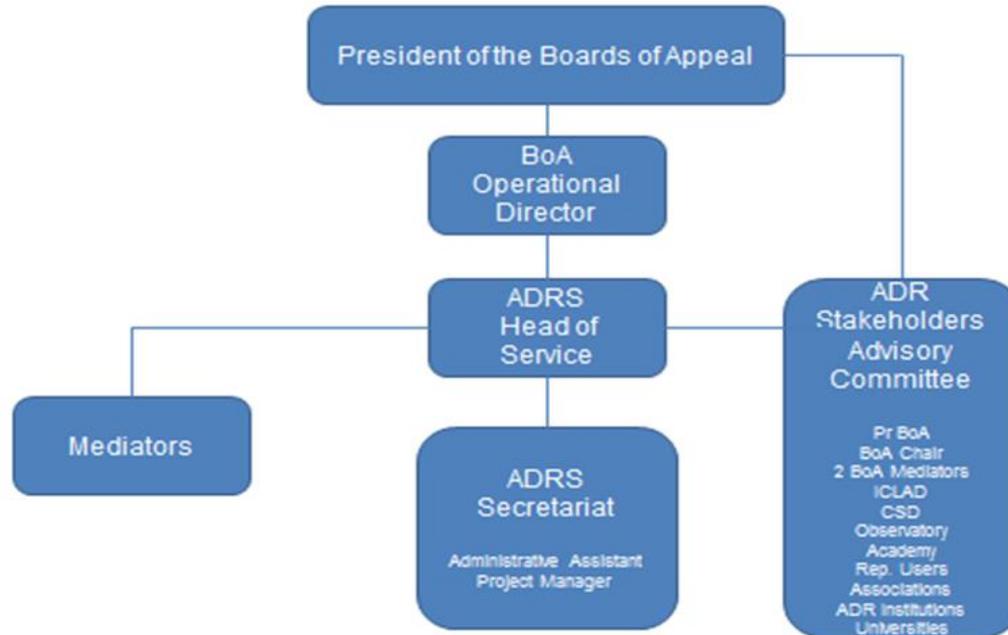


Evolving to an ADR Service

- **Conciliation** (where solutions are proposed by the facilitator) offered shortly after mediation launched
- Proved to be quite popular
- Parties need **flexibility** in the ADR processes and solutions offered
- Creation of **Stakeholders Advisory Board** (input from business and other stakeholders)
- Launching of **ADR Service** in December 2018
- **Expert determination** (2020)



EUIPO's Boards of Appeal Mediation – Structure of the ADR Service



ADR STAKEHOLDERS ADVISORY BOARD (“ADR SAB”)

- **Four-pronged approach:**
 - **EU Institutions and National IPOs;**
 - **Commercial associations drawn from a broad spectrum of business;**
 - **ADR institutions and organizations;**
 - **IP professional associations.**
- **Designed to draw on synergies and activities, tailored to the needs of business.**



ADR STAKEHOLDERS ADVISORY BOARD (“ADR SAB”)

The ADR SAB is a think tank that has been created in order to:

- ✓ give a collective voice to IP intensive industries;
- ✓ offer a forum in which business, practitioners and ADR providers can network and exchange expertise;
- ✓ acquire insights into the customers’ experience and expectations;
- ✓ achieve the integration of users’ feedback with reference to ADR;
- ✓ become the central point for discussion and steering of the current ADR instruments (mediation and conciliation) and key initiatives;
- ✓ optimize IP assets for business;
- ✓ focus on important business’ segments in the EU.



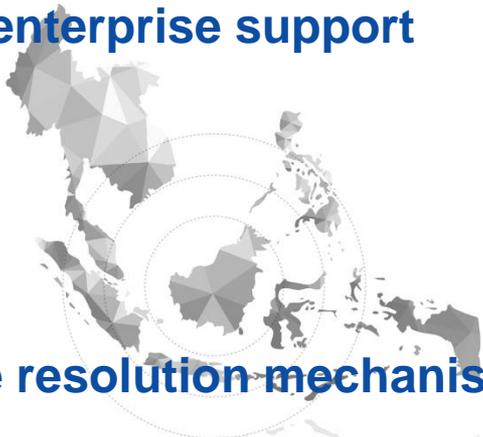
PLANS AND PROJECTS

- **ADR toolkit**

- ✓ **Online Dispute Resolution**
- ✓ **Early neutral evaluation**
- ✓ **Assisted negotiation**
- ✓ **Non-binding adjudication**
- ✓ **Pledges**
- ✓ **Contractual clauses**
- ✓ **Hybrids**



PLANS AND PROJECTS

- **Small and medium enterprise support**
 - **Business outreach**
 - **Use of AI**
 - **Tailor-made dispute resolution mechanisms;**
 - **Training and awareness raising on ADR in the IP field.**
- 





THANK YOU



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