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Introduction to IPOPHL Alternative Dispute Resolution Services

Atty. Elojra Carmiel D. Javier

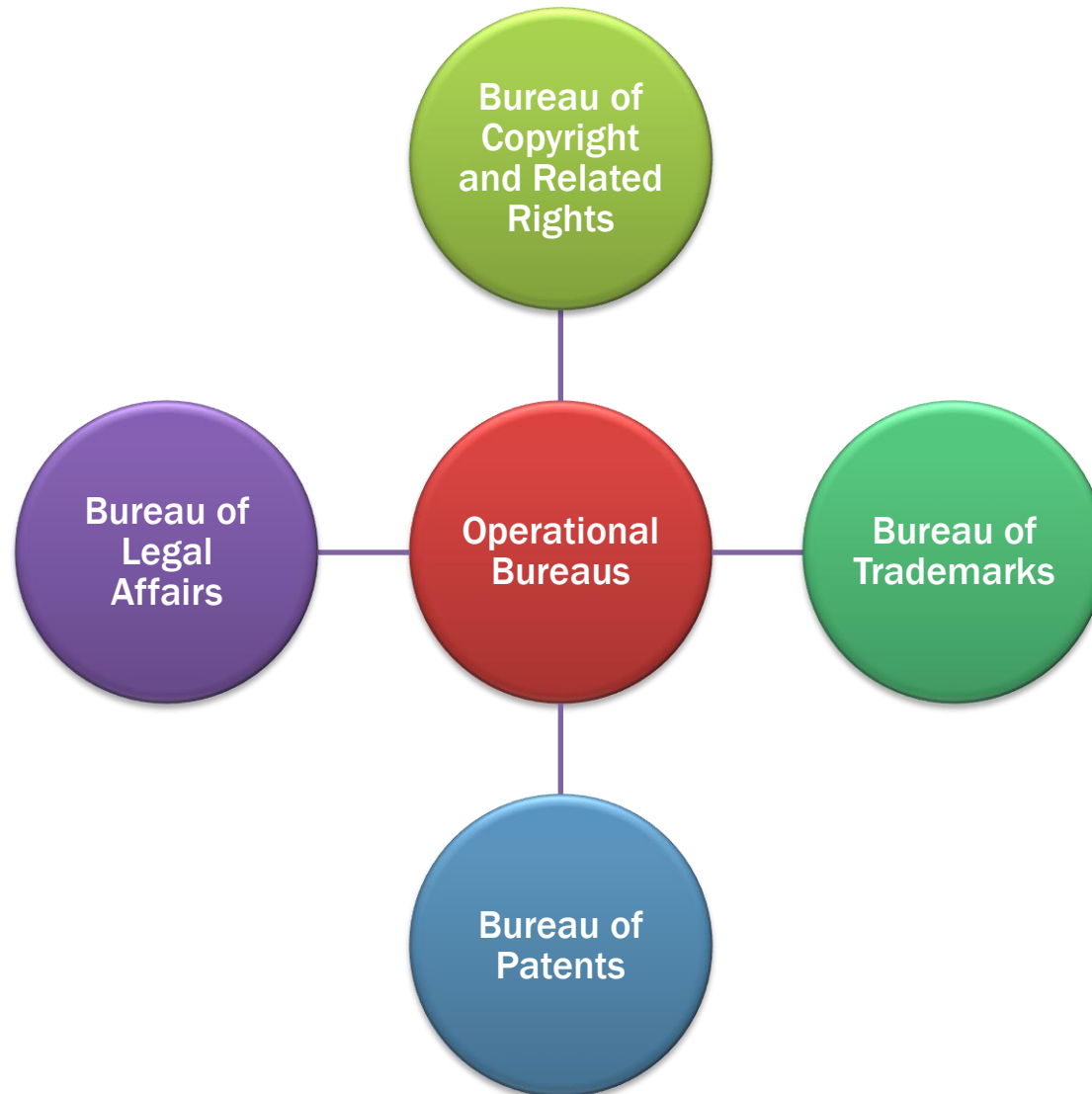
Attorney III, Bureau of Legal Affairs

**Interim Operations Head, Alternative Dispute
Resolution Service Unit (IPOPHL)**

Intellectual Property Office of the Philippines



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Sources of IP Disputes



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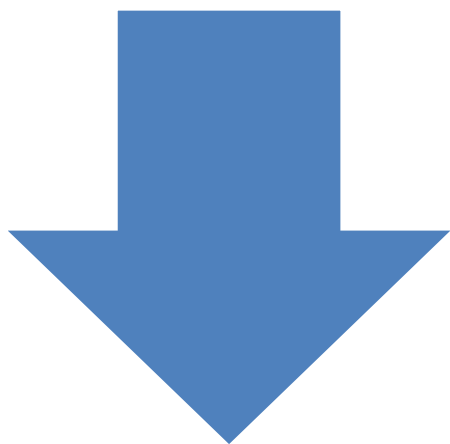
Ownership of right

Infringement of right

How do you protect your IP Rights?



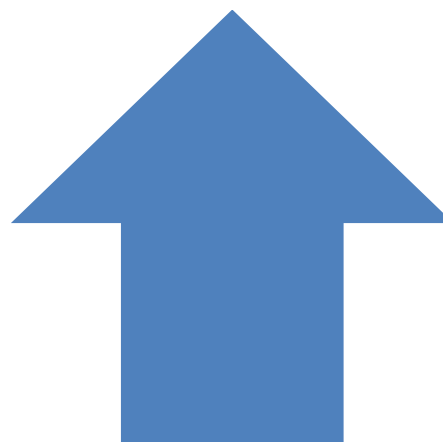
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IP Adjudication



**IP Mediation/
Arbitration**





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IP ADJUDICATION

- The administrative jurisdiction of the **Bureau of Legal Affairs (BLA)**, pursuant to Sec. 10 of Republic Act 8293 are as follows:

Inter Partes Cases (IPC)

Opposition to the application for registration of marks

Cancellation of trademarks

Cancellation of patents, utility models, and industrial designs; and

Petition for compulsory licensing of patents

Intellectual Property Rights Violation (IPV)

Infringement of trademark

Unfair Competition

Infringement of patent, utility model and industrial design

Infringement of copyright and related rights

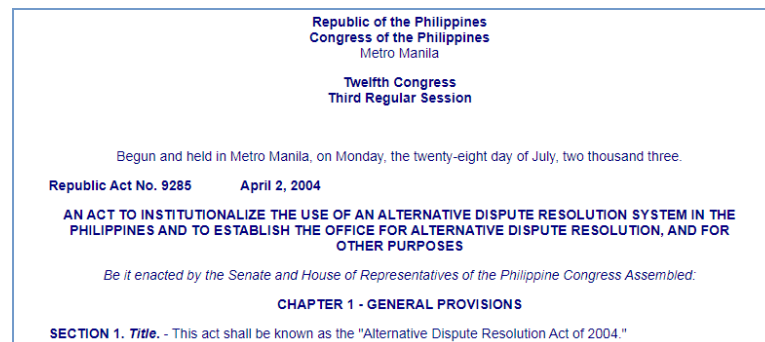
False designation of origin

Alternative Dispute Resolution in the Philippines



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- "Alternative Dispute Resolution System" means any **process or procedure** used to **resolve a dispute or controversy, other than by adjudication** of a presiding judge of a court or an officer of a government agency, as defined in this Act, in which a **neutral third party** participates to assist in the resolution of issues, which includes **arbitration, mediation, conciliation, early neutral evaluation, mini-trial, or any combination thereof** (Sec. 3, Republic Act No. 9285, ADR Act of 2004).





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Advantages of ADR

- Empowerment of Parties
- Cost-effective
- Possibility of online proceedings
- Confidential and Consensual in nature
- Less adversarial



IPOPHL ADR Mechanisms



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Mediation

Arbitration



Mediation

- "Mediation" means a **voluntary process** in which a **mediator, selected by the disputing parties, facilitates communication and negotiation, and assist the parties in reaching a voluntary agreement** regarding a dispute.
- "Mediator" means a **person** who conducts **mediation**. (Sec. 3).





General Features of Mediation

- **Adherence to confidentiality of information**
- **Confidential information shall be inadmissible in any adversarial proceedings**
- **The mediator may not be called to testify or subpoenaed**
- **The mediator may not make a report except that the mediation occurred and its outcome**

Overview of the Mediation Process



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- **Introduction of Parties**
- **Opening Statements**
- **Agenda Setting**
- **Exploration of Issues**
- **Private Sessions (if needed)**
- **Joint Session**
- **Agreement/Settlement**

BLA – Alternative Dispute Resolution Services



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IPOPHL-
Mandatory
Mediation,
*Adjudication-based
mediation*

IPOPHL-WIPO
Mediation Option
*WIPO-based
Mediation*

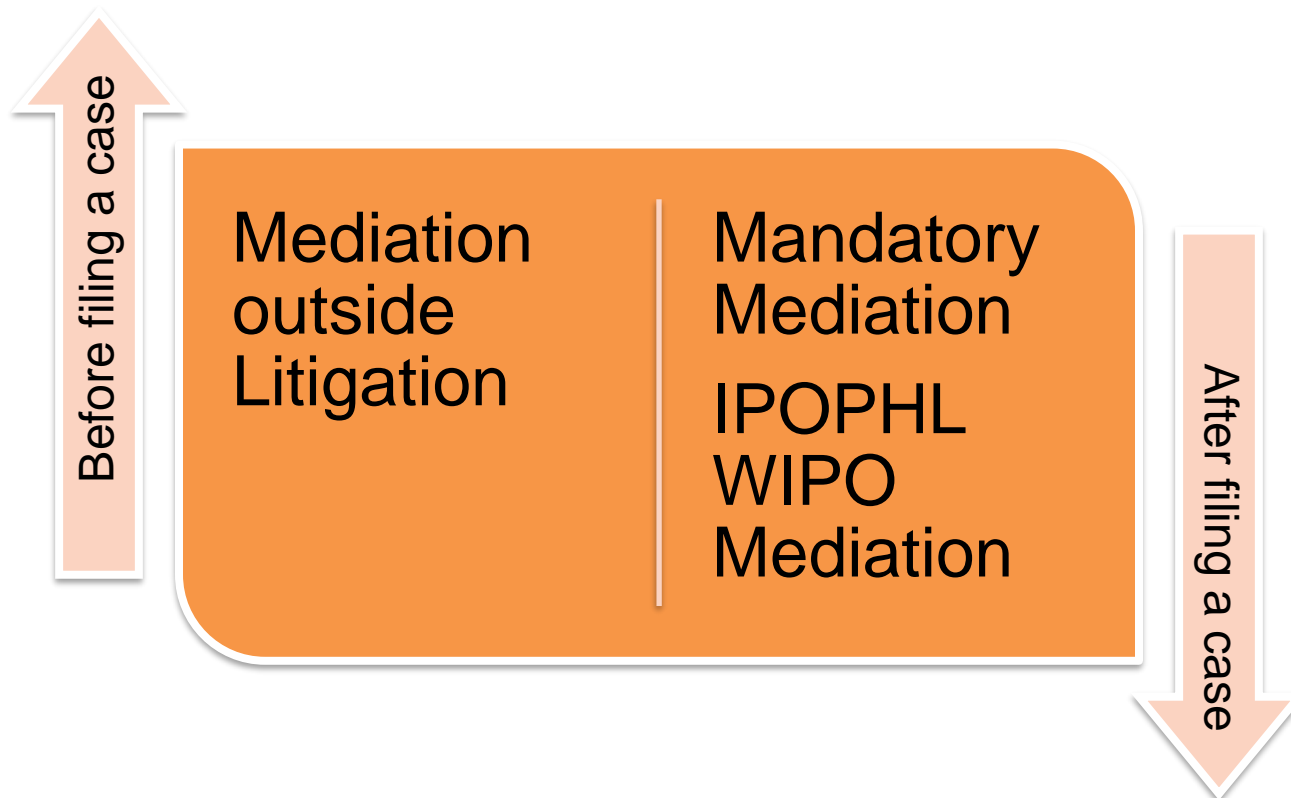
Mediation Outside
Litigation (MC No.
2019-006),
*Planned Early
Dispute Resolution*

Mediation in IPOPHL



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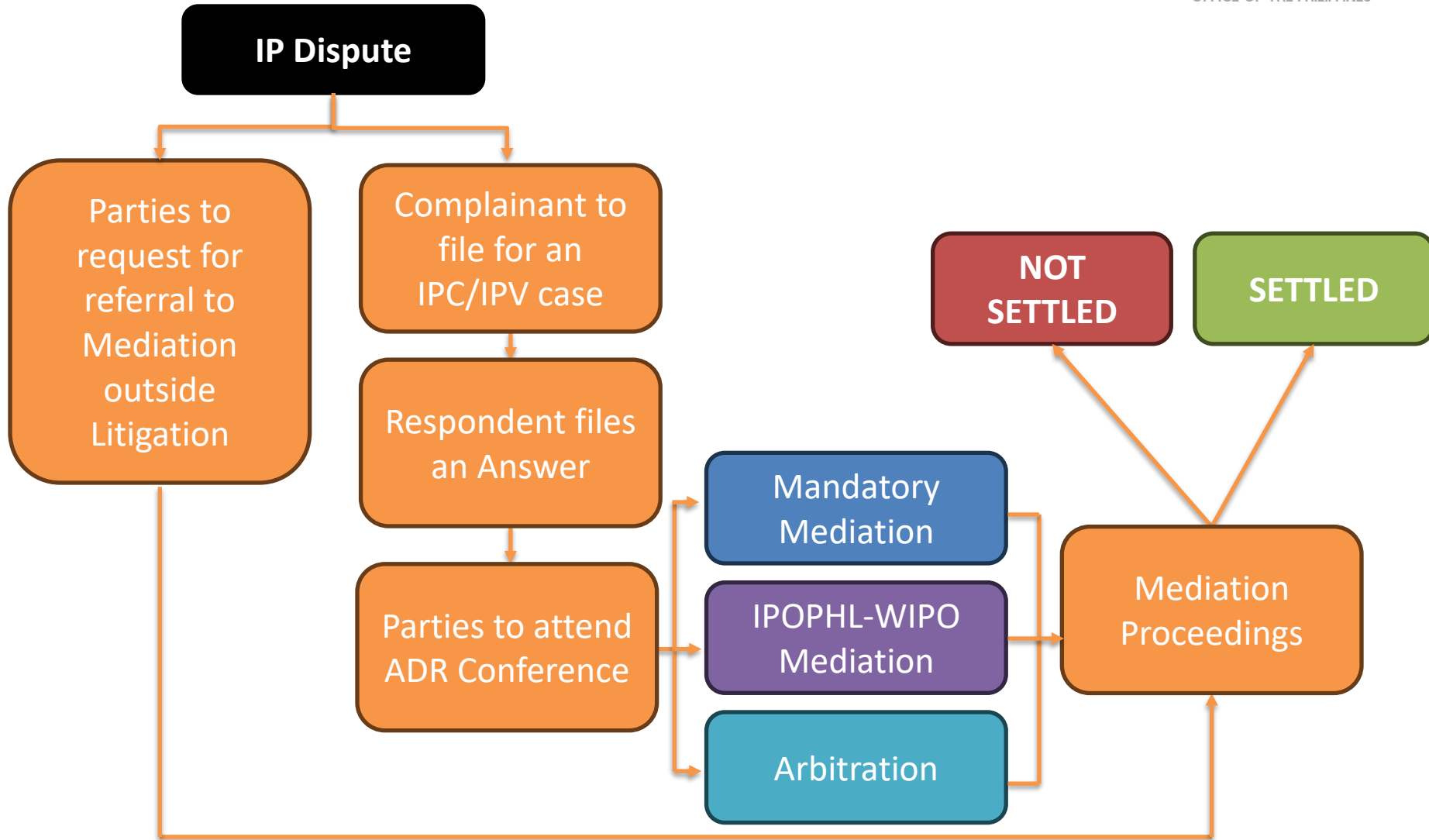
IPOPHL, through the BLA, offers alternative dispute resolution services (BLA-ADRS):



How to avail for Mediation Service in the IPOPHL

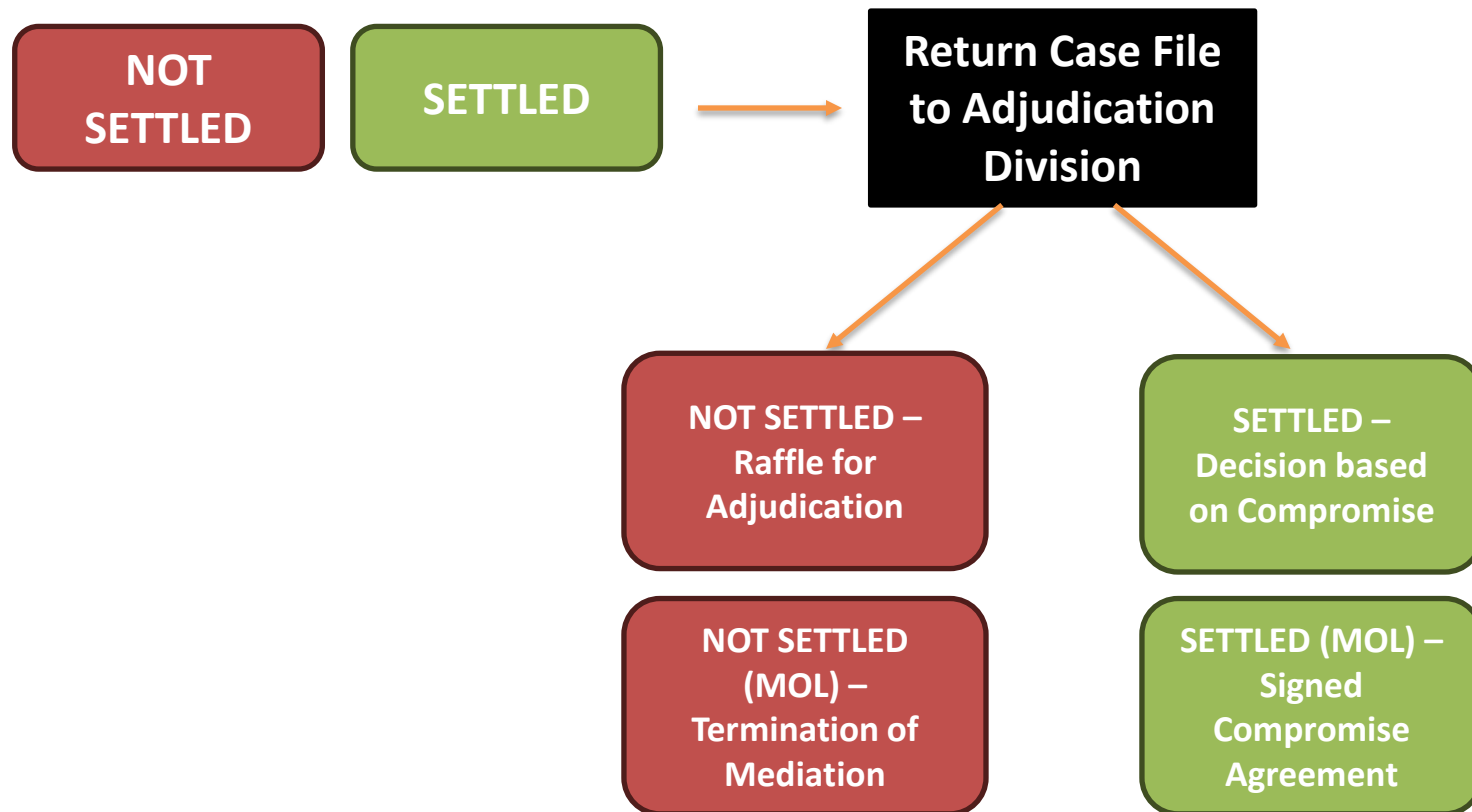


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How to avail for Mediation Service in the IPOPHL



Mediation Fees



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Mediation Service	Mediation Fees
Mandatory Mediation	Php 4,040 (inclusive of four mediation sessions)
	Php 2,020 (extension fee)
IPOP HL – WIPO Mediation	Php 4,040 (inclusive of four mediation sessions)
	Php 2,020 (extension fee) [Preferential Fee based on WIPO Agreement]
Mediation Outside Litigation	Php 7,575 (inclusive of eight mediation sessions)
	Php 1,010 (extension fee)

Development of Mediation in IPOPHL



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Feb 2011
**Start of Mediation
Service**

May 2014
**IPOPHL-WIPO
Mediation Option**

October 2018
**Shift to Mandatory
Mediation**

2019
**Implement
mediation outside
litigation**

2020
**Implement Online
Mediation**

2021
**Institutionalization
of Online Mediation**

2024
**Appeals before
ODG are
optional/voluntary**

Coverage of IPOPHL Mediation



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- Intellectual Property Violation (IPV)
- Inter Partes Cases (IPC)
- Technology Transfer Cases
- Terms of License involving author's rights

Alternative Dispute Resolution Services Unit (ADRS)



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The primary function of the ADRS is to assist the parties during the mediation period to facilitate the resolution of the dispute:

- Briefing the parties prior to mediation to familiarize them on the rules and procedures of IPOPHL on mediation;
- Assists the parties in the selection of mediator;
- Provides case management service during the duration of mediation; and
- Return the case to the originating office upon conclusion of mediation.



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Usual Terms of Settlement

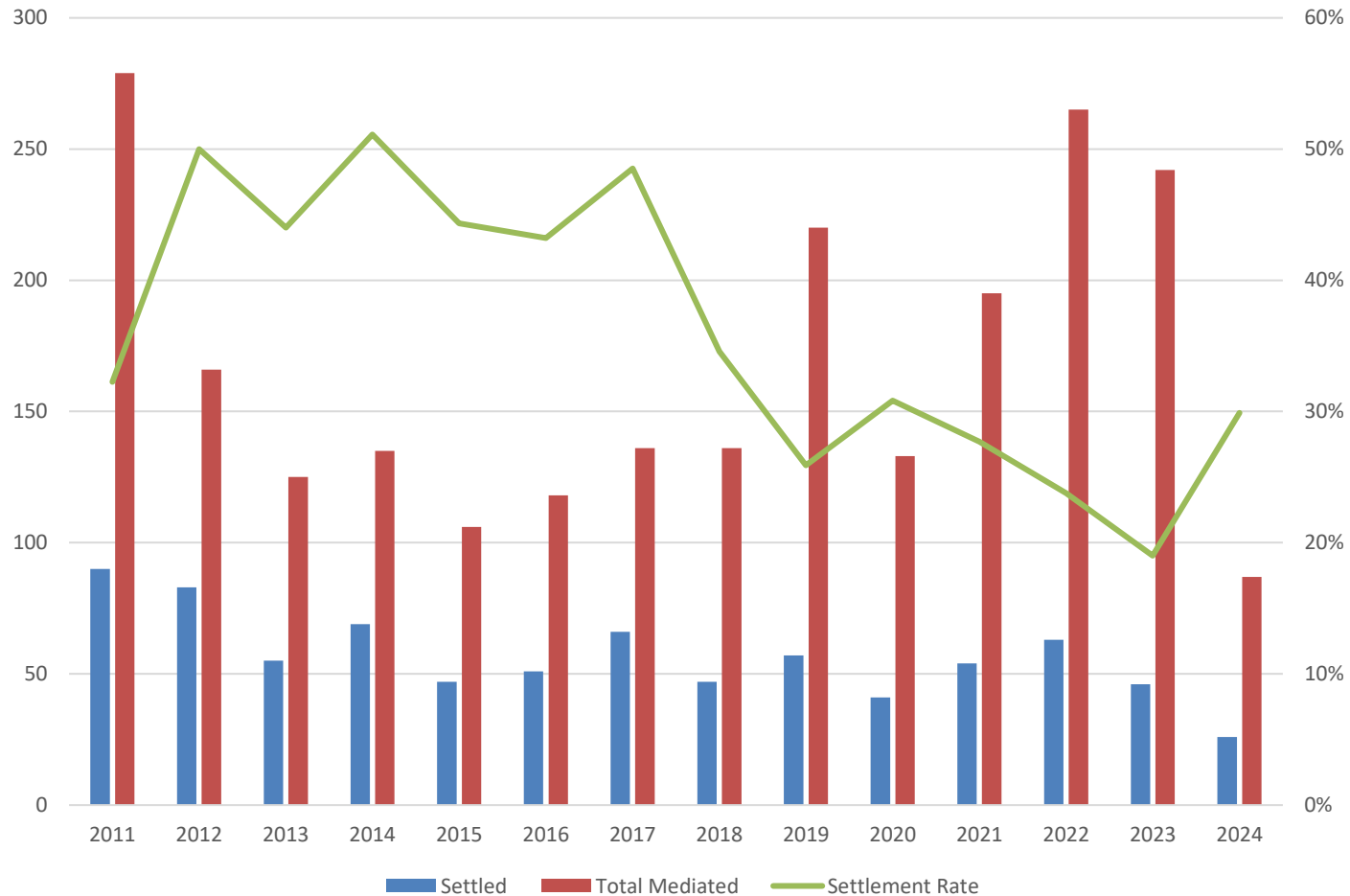
- **Amendment of the Trademark application**
 - **Limitation of class of goods**
 - **Change of the feature/"look" of the Trademark**
- **Co-existence Agreement**
- **Payment of damages**
- **Reimbursement of applicant's expenses**
- **Licensing of Trademark**



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Mediation Statistics – Settlement Rate

Year-on-Year Data on Mediation Settlement Rate



Mediation Outside Litigation



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Successful MOL Signing between San Miguel Foods and GLRI



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Qualifications of IPOPHL Mediators

Have finished a bachelor's degree, preferably engineers, lawyers, etc.

At least 37 years old

With good moral character

Trustworthy and able to handle confidential information

Creative in giving proper options to the parties

At least seven (7) years of experience in mediating cases or in legal practice in IP disputes

Proficient in oral and written communication

Best Practices in IPOPHL Mediation



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Training and
Accreditation of
Mediators

Accredited with the
Office for
Alternative Dispute
Resolution
(OADR)

Effective Case
Management

Dedicated unit
managing the
mediation process

Penalty for non-
appearance of a
party during ADR
conference

100% online
process

ISO 9001:2015
compliant
procedures





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Bureau of **Legal Affairs** Alternative Dispute Resolution



The Mediation Process

Mandatory Mediation

WIPO Mediation Option

Mediation Outside Litigation

www.ipophil.gov.ph/ip-mediation



Arbitration

- "Arbitration" means a **voluntary process** in which a **one or more arbitrators, appointed in accordance** with the agreement of the parties, or rules promulgated pursuant to this Act, **resolve a dispute by rendering an award.**
- "Arbitrator" means a **person** appointed to render an award, alone or with others, in a dispute that is subject of an **arbitration agreement** (Sec. 3).



Characteristics of Arbitration



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- Party Autonomy
- Neutrality
- Technical expertise
- Privacy and confidentiality
- Speed
- Flexibility in procedure and choice of law
- Ease of enforcement



How do parties get into IP Arbitration?



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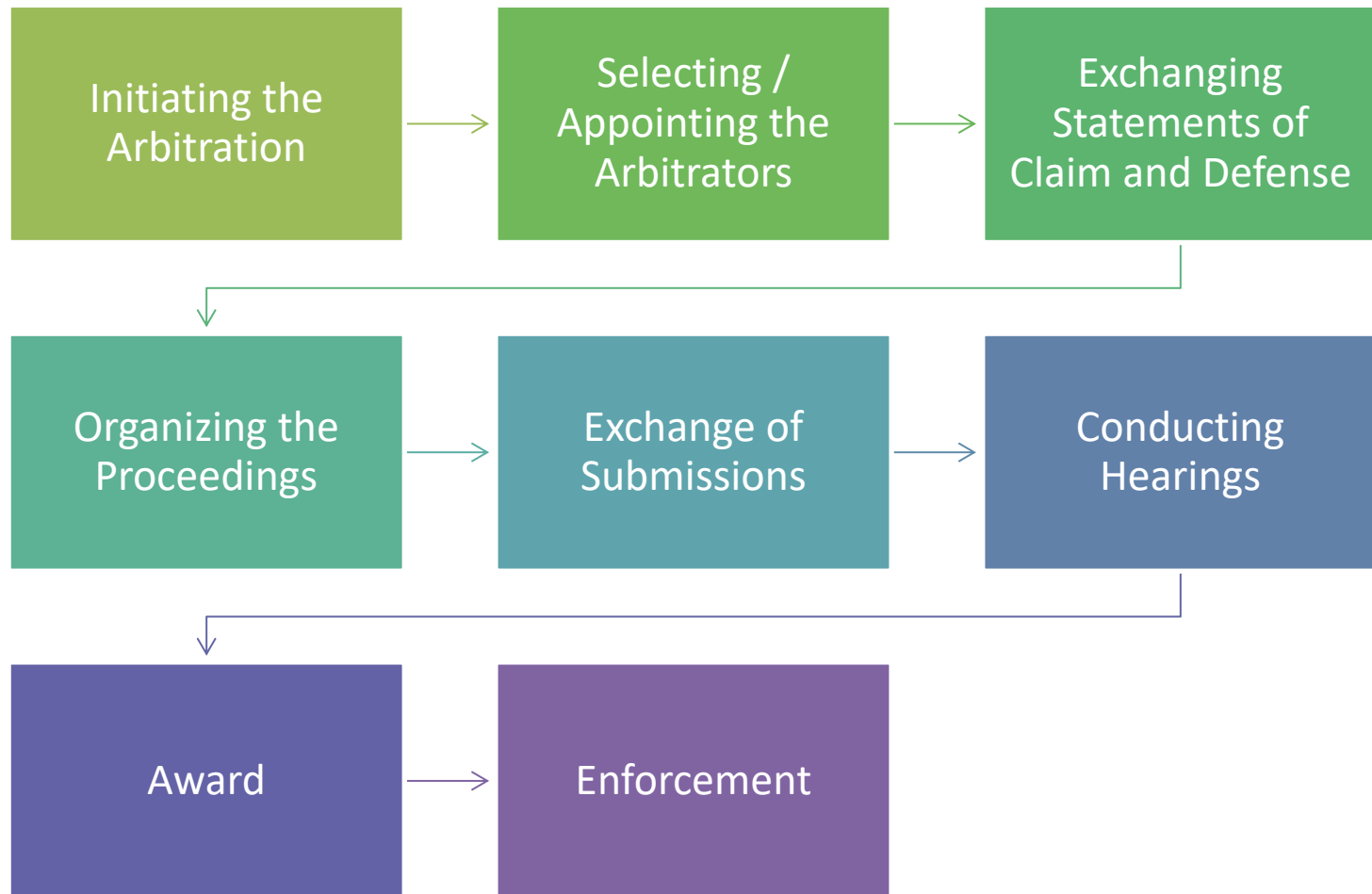
- Arbitration clause
- Submission agreement



The Arbitral Process



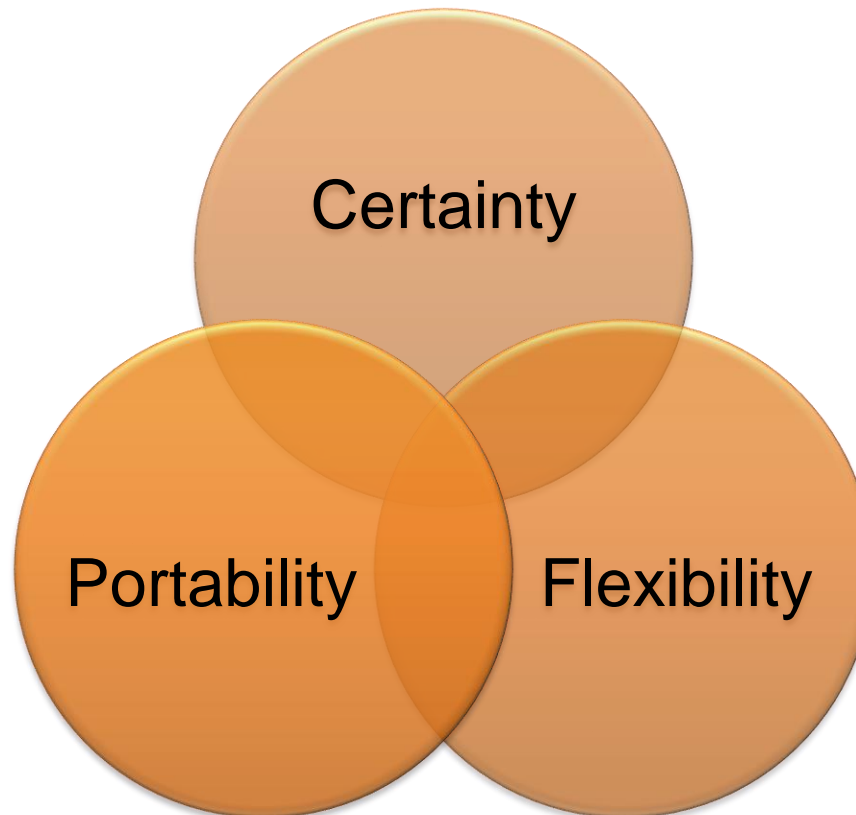
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Features of Arbitration



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IPOPHL Arbitration



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2011

Initial
offering of
Arbitration
Services

2023

Revival of
IPOPHL
Arbitration

2024

Mediation-
Arbitration
Referral
Model

2024

Issuance of
Arbitrator
Accreditation
Guidelines

Qualifications of IPOPHL Arbitrators



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Have finished a bachelor's degree, preferably engineers, lawyers, etc.

Ten years of legal practice involving Intellectual Property or seven years experience in Arbitration

Up to date with the procedural and substantive knowledge about IP and Arbitration

With good moral character

Trustworthy and able to handle confidential information

Proficient in oral and written communication

Litigation v. Arbitration



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COURT LITIGATION	ARBITRATION
Multiple proceedings under different laws with risk of conflicting results	Single proceeding under the law determined by the parties
Decision maker (judge) may not have the relevant experience or knowledge in IP	Parties can select arbitrator(s) with relevant IP experience
Procedures are dependent on the Rules of Court	Arbitrator(s) and parties can shorten the procedure
Possibility of appeal until the Supreme Court	Limited appeal option
Public proceedings and records	Proceedings and award are confidential

Mediation v. Arbitration



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	MEDIATION	ARBITRATION
Third party Neutral	Mediator	Arbitral Tribunal/Sole Arbitrator
Role of Neutral	Facilitate communication and assist parties in reaching a decision	Decides on the dispute based on evidence and submissions
Nature of Procedure	Interest-based procedure	Rights-based procedure
Determination of Outcome	Will of the Parties	Seat of Arbitration
End Result	Compromise Agreement (acceptable to both parties)	Arbitral Award

Partner Agencies



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Department
of Justice -
Philippines



Office for
Alternative
Dispute
Resolution



Philippine
Dispute
Resolution
Center, Inc.



Cooperative
Development
Authority



Philippine
Franchise
Association



IPOPHL ADR Activities



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Rising.
Shining.
Beckoning.

Alternative Dispute Resolution (ADR) Stakeholders Forum

Moderator
Atty. Daniel S. Hofileña
Kalaw Prasad & Hofileña

Lecture: BLA Alternative Dispute Resolution Services Primer
Atty. Christine Panglinan-Canlapan
Bureau of Legal Affairs / BLA-ADRS

Session 1: The Role of the Public Sector in Promoting ADR as a Means to Resolve Disputes

Atty. Ricardo R. Blancaflor
Director General
IPOPHL

Atty. Lolibeth R. Medrano
Philippine Competition Commission

Atty. Maria Gladys C. Vilchez
Hechanova, Bugay Vilchez & Andaya-Racadio

Session 2: Arbitrability of IP Disputes and Possible Role of Arbitration in IP

Atty. Shirley F. Alinea
Martinez Vergara & Gonzales Sociedad

Atty. Donemark J. L. Calimon
Quisumbing Torres

Atty. Raymond Pasillao
Office of the Solicitor General

Session 3: IP Arbitration: Opportunities and Challenges

Atty. Dranyi Jared P. Amoroso
Quisumbing Torres

Atty. Arleo Antonio R. Magtibay, Jr.
Magtibay Angeles & Alfelor Law Offices

Atty. Francisco Viceni II G. Alba II
IPOPHL Bureau of Legal Affairs

August 11, 2023
8:00 AM to 5:00 PM
IPOPHL Multi-Purpose Hall

Join us online!
bit.ly/46QHw0

FREE

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Thank You!



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#28 Upper McKinley Road
McKinley Hill Town Center
Fort Bonifacio, Taguig City
Philippines



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