



Promoting Intellectual
Property Rights in the
ASEAN Region

Topic 2: The role of different actors in mediation

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2. Mediator profile and qualification
3. Role and duties of mediators
4. Role and duties of parties and lawyers
5. Q&A



Presentation of the actors in mediation

1. Presentation of the actors in mediation

Mediator

Parties

Lawyers



Mediator profile and qualification

2. Mediator profile and qualification

All EUIPO mediators received special training

Twice a year mock mediation trainings to learn through a live case scenario

All mediators have access to webinars and video sessions, opportunity to observe a mediation

Additional external trainings

Coordination meetings



Role and duties of mediators

3. Role and duties of mediators

- **The mediator is:**
 - Third party professional
 - Neutral (impartial and independent)
 - Process manager assisting the parties in reaching a voluntary and mutually satisfactory settlement
 - Facilitator of the communication and discussions between the parties
 - Not a judge - No authority to settle the case – No reproaching/criticism of parties positions
 - Not an advisor - No legal advice or to represent any party

3. Role and duties of mediators

- ✓ has **no links** (professional or personal) with either of the parties
- ✓ assures **confidentiality** of mediation process at all levels (from request to outcome)
- ✓ shows **respect**, empathy but not favours any of the parties
- ✓ **respects** parties' decisions, but practices “reality check”

3. Role and duties of mediators

Based on BoA rules on mediation:

- Mediators must at all times act with **impartiality** towards the parties and be committed to serve all parties equally with respect to the process of mediation.
- The mediator must disclose **any circumstances that give rise to a conflict of interest**:
 - any personal or business relationship with one or more of the parties;
 - as a representative, legal advisor or decision taker of the contested decision or
 - as an assistant/member of the appeal in dispute
- **No disqualification**, if the parties have been notified in writing and have expressly consented in writing to the designation of the mediator.

3. Role and duties of mediators

Furthermore, based on BoA rules on mediation:

- Examiners and members of the Opposition /Cancellation/Invalidity Divisions, the BoA or any other person may not be designated as mediator if:
 - he/she has any personal interest OR previously been involved in the case under appeal.**
- The mediator should not be involved as an examiner, member of the Opposition/Cancellation /Invalidity Divisions or the BoA in **any further proceedings** of the case

3. Role and duties of mediators

- **Guides** the mediation process
- **Listens** actively and **asks** relevant questions
- **Helps** the parties to capture the overall picture
- **Assists** the parties in preparing the offers and evaluate how they will be received by the other party
- **Identifies** objective criteria for possible solutions
- **Manages** expectations and reactions
- **Exempted** from liability on the outcome, the legality and enforceability of the settlement agreement

3. Role and duties of mediators : explore interest and find common ground

- They help to discover what may be **behind the surface of the conflict**
- Looking for **interests** behind positions and strategies
- Looking for needs, experiences, values, assumptions and unstated opinions

3. Role and duties of mediators

- **Impartiality and Distance to the dispute**
- **Confidentiality**
- **Active listening skills**
- **Respect and Patience**
- **Flexibility and Open mind**
- **Empathy and Understanding human and business psychology**

3. Role and duties of Co-Mediators

Co-mediation is where two or more mediators are working together on a specific case
Co-mediators act as a **team**

Examples where co-mediation may be useful:

- Complex dispute
- Need for combination of different skills
- Language

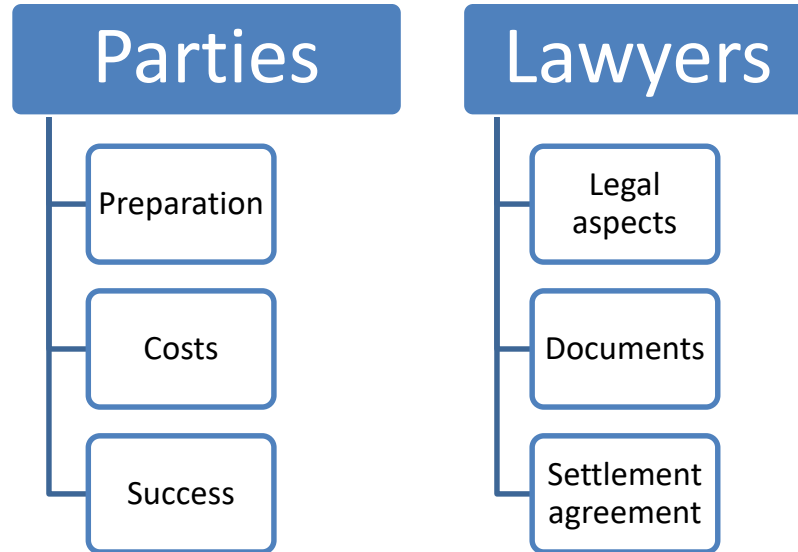
Before the mediation starts, **agreement on** :

- Roles and tasks
- Cooperation and communication
- Management of process in case they have different views



Role and duties of parties and lawyers

4. Role and duties of Parties and Lawyers



4. Role and duties of Parties and Lawyers

Parties should:

- Have full authority to settle the dispute
- Provide the mediator with a written summary of the dispute before the mediation takes place
- Cooperate with the mediator to settle the dispute as soon as possible
- Be proactive: Prepare the first offers, adjust expectations (BATNA/WATNA) and reconsider positions

4. Role and duties of Parties and Lawyers


Lawyers should:

Help the client in the different stages of the process – time/cost benefit analysis

Evaluate chances of success – identify legal strengths and weaknesses

Advise about disclosure
- ensure confidentiality

Prepare the case/documents with the client - draft the settlement agreement



Q&A



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