



Promoting Intellectual  
Property Rights in the  
ASEAN Region

## Topic 3: Introduction to EUIPO mediation services

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## Content

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1. The BoA ADR service
2. Legal basis: EUTMR and EU Mediation Directive
3. EUIPO mediation process
4. Statistics and success rate
5. Useful EUIPO resources
6. Success real examples and case studies of IP mediation



# The BoA ADR service

## 1. The BoA ADR service

### EUIPO Boards of Appeal: a modern centre for IP dispute resolution



The importance of effective IP dispute resolution



EUIPO's Alternative Dispute Resolution Boards of Appeal Service

## 1. The BoA ADR service

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- Toolkit for Alternative Dispute Resolution
- Services provided online
- No additional costs in proceedings before the Office



## 1. The BoA ADR service

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- The procedure must involve two parties (inter partes), excluding the Office
- All users involved in appeal proceedings before the Boards of Appeal
- Special effective dispute resolution service for SMEs involved in:
  - opposition proceedings under the EUTMR
  - cancellation proceedings under the EUTMR
  - RCD invalidity proceedings

## 1. The BoA ADR services

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- ✓ Mediation
- ✓ Conciliation
- ✓ Expert determination
- ✓ Assisted negotiation (SMEs)
- ✓ Special Service for SMEs: Effective Dispute Resolution Service

## MEDIATION TOOLKIT : MEDIATION AND CONCILIATION techniques

### ASSISTED NEGOTIATION

- Process in which an impartial facilitator will coach an unrepresented SME in their negotiations with another party to reach an amicable agreement
- The facilitator's task consists in assessing the underlying circumstances of the dispute coaching on appropriate strategies and techniques on negotiation and on engaging in effective dialogue with the other party
- The facilitator does not take part in the negotiation process





## EFFECTIVE DISPUTE RESOLUTION (EDR) SME COVID-19 special service



### Effective Dispute Resolution case handlers

The special service is offered, as of **1<sup>st</sup> July 2020**, in the following EUIPO proceedings (**for the first time also in the first instance**)

#### Opposition proceedings

- After the end of the cooling-off period and only for unrepresented SMEs.

#### Cancellations, RCD invalidities, and appeals

- For both represented and unrepresented SMEs at any stage of these proceedings.



# Legal basis: EUTMR and EU Mediation Directive

## 2. Legal basis: EUTMR and EU Mediation Directive

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### The general principles of the EU Mediation Directive

- **Encourage** the use of **mediation** to facilitate dispute resolution in the EU
- Help citizens **avoid** the **worry**, **time** and **cost** of court **litigation**, and thus enable them to secure their legal rights in an **efficient** way
- **Encourage** the **training** of mediators and to ensure **high quality** of mediation
- Ensure **confidentiality**
- Give **judges** the **power** to invite disputants to **try mediation** first, where appropriate
- Ensure that parties who choose mediation in an attempt to settle a dispute are **not subsequently prevented** from initiating judicial proceedings or arbitration
- **Enforceability of agreements** resulting from mediation, if the parties so agree

## 2. Legal basis: EUTMR and EU Mediation Directive

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- **Preamble 35 EUTMR and relevant provisions on cancellation and opposition:** The EUIPO shall facilitate the amicable settlement of disputes relating to EU trade marks and Community designs on the basis of mutual agreement
- **Article 151.3 EUTMR:** The Office may provide voluntary mediation services with a view to helping the parties to reach an amicable settlement.
- **Article 170 EUTMR :** The legal basis for the establishment of a mediation centre for the purpose of Article 151.3 EUTMR.

## 2. Legal basis

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- ✓ **Mediation:** Decision No 2013-3 of the Presidium of the Boards of Appeal of 5 July 2013 on the amicable settlement of disputes
- ✓ **Conciliation:** Decision No 2014-2 of the Presidium of the Boards of Appeal of 31 January 2014 on the amicable settlement of disputes by the competent Board, amended on 1 July 2020
- ✓ **Assisted negotiation (SMEs):** Decision No 2020-4 of the Presidium of the Boards of Appeal of 17 June 2020
- ✓ **Expert determination:** Decision No 2020-3 of the Presidium of the Boards of Appeal of 9 June 2020



# EUIPO mediation process

- **Mediation is a dispute resolution tool offered by the EUIPO in appeal proceedings**
  - ✓ Included in the appeal fee
  - ✓ Voluntary in nature
  - ✓ Available to represented or unrepresented parties
- **Initiation**
  - ✓ **Unilateral request**
  - ✓ **Bilateral request**
  - ✓ **Proposal of rapporteur**

## Mediation planning and first contacts

Mediator sends the parties a **letter of introduction**:

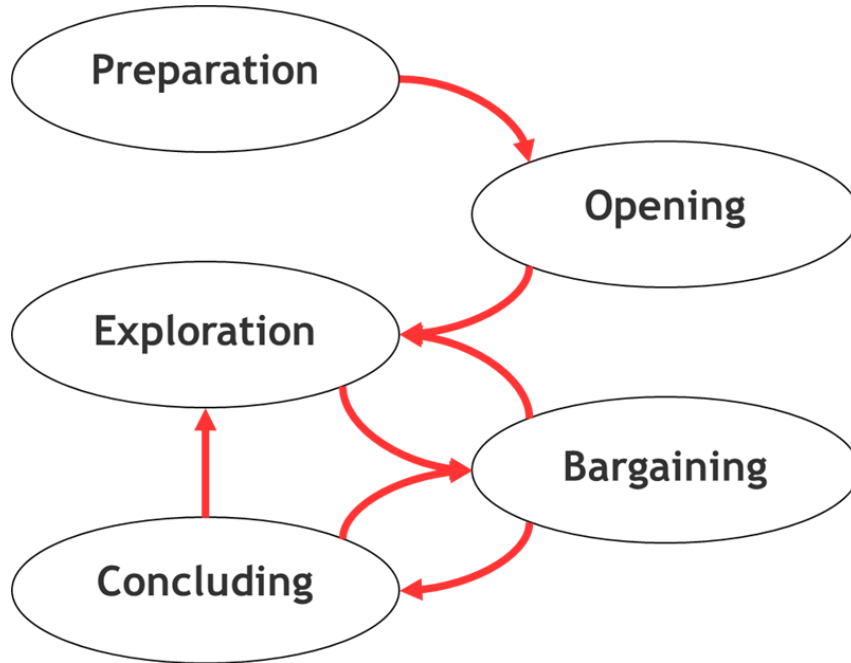
- ✓ Requesting selection of the **mediation venue** (or **online**)
- ✓ Asking for a **range of available dates** for the mediation
- ✓ Insisting that **business decision-takers** be present (authority to bind)
- ✓ Attaching the **mediation agreement** (including **confidentiality annex**) for signature
- ✓ Setting timeframe for receiving a **summary of the case**



## The Mediation Day

1. Initial **joint session**
2. Break out into alternating **individual caucuses** (private sessions) with the parties
3. Possible **intermittent joint sessions** (particularly as bargaining progresses)
4. Drafting of heads of agreement/MoU
5. Conclusion on next steps

## Mediation phases





# Statistics and success rate

## 4. Statistics and success rate



**Successful:**

39 mediations

107 conciliations



32 accredited  
mediators



Services can  
be done in 12  
languages



Success rate:  
80%



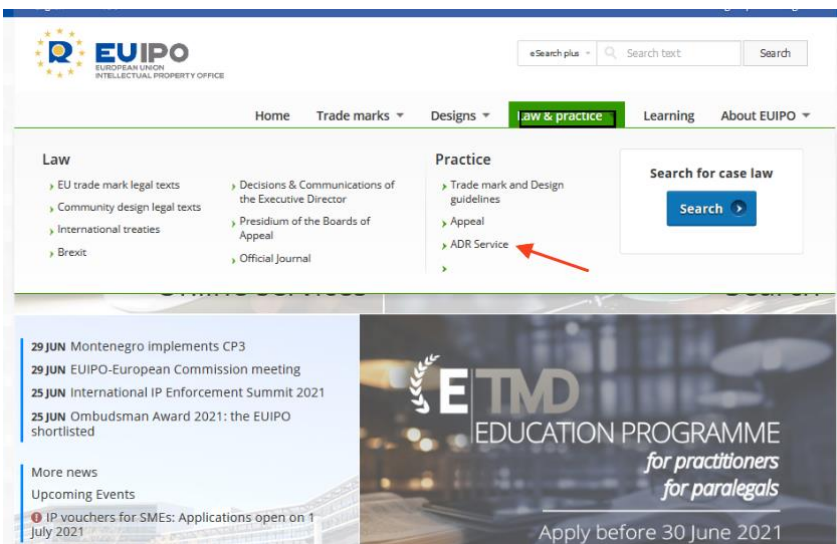
ADRS  
Secretariat: 7  
staff members  
involved



# Useful EUIPO resources

## 5. Useful EUIPO resources

ADR webpage <https://euipo.europa.eu/ohimportal/en/adr-service>



The screenshot shows the EUIPO website home page. The navigation bar includes Home, Trade marks, Designs, Law & practice (highlighted), Learning, and About EUIPO. Under the 'Law' section, there are links to EU trade mark legal texts, Community design legal texts, International treaties, Brexit, Decisions & Communications of the Executive Director, Presidium of the Boards of Appeal, and Official Journal. Under the 'Practice' section, there are links to Trade mark and Design guidelines, Appeal, and ADR Service (indicated by a red arrow). A search box for case law is also present. A sidebar on the left lists upcoming events: 29 JUN Montenegro implements CP3, 29 JUN EUIPO-European Commission meeting, 25 JUN International IP Enforcement Summit 2021, and 25 JUN Ombudsman Award 2021: the EUIPO shortlisted. A banner at the bottom promotes the E TMD Education Programme for practitioners for paralegals, with a deadline to apply before 30 June 2021.



The screenshot shows the EUIPO ADR Service webpage. The navigation bar includes Home, Trade marks, Designs, Law & practice (highlighted), Learning, and About EUIPO. The breadcrumb trail shows EUIPO - Home > Law & practice > Practice > ADR Service. The main heading is 'Alternative Dispute Resolution'. A blue box contains text: 'The ADRS offers mediation, conciliation, assisted negotiation and expert determination, which may be used in combination with one another or separately.' A photo shows two people shaking hands. A sidebar on the right lists 'Practice' items: Trade mark and Design guidelines, Appeal, and ADR Service (highlighted). Below the sidebar, there are links to 'Tools & documents': EU quality products registries, Overview of GC/CJ case law 2019-2021, and a 'Print this page' button. The footer text states: 'Operating under the auspices of the EUIPO Boards of Appeal, the **Alternative Dispute Resolution Service (ADRS)** acts as a modern IP dispute resolution hub offering a full spectrum of ADR tools to businesses and individuals active in the EU and, as the case may be, beyond. The ADRS offers mediation, conciliation, assisted negotiation and expert determination, which may be used in combination with one another or separately.'

## 5. Useful EUIPO resources

### Types of ADR services

#### Types of ADR services offered

The ADRS offers the services below, which can be used in combination with one another or separately, according to the needs of the interested parties.

Mediation

Show

Conciliation

Show

Assisted Negotiation

▼

Expert Determination

▼



ADR services comparison chart



Mediation

Conciliation

Hide

Conciliation is a voluntary process in which a conciliator **proactively suggests possible solutions** to the dispute. These proposals will be discussed, negotiated and fine-tuned with the parties, who remain at all times free to accept or decline the proposed solution.

The conciliator will be in charge of guiding the conciliation process and will submit a proposal for the settlement of the dispute, if he or she considers there is a reasonable prospect that it could be accepted by the parties and an end put to the dispute. It must be stressed that the decision to conciliate is purely voluntary and requires the consent of all parties to the dispute.

The procedure differs from mediation in that the conciliator makes proposals as to how the dispute could be swiftly settled whereas in mediation the mediator usually does not make proposals but works with the parties to assist them in formulating their own proposals.

When suitable, conciliation may be suggested by the Rapporteur of a case pending at the Boards of Appeal. However, it can also be requested by one or both parties, using a unilateral or joint request form. In all cases, the consent of all parties to the dispute will be needed.

Detailed documentation on all aspects of the conciliation process can be accessed by clicking on the links below.

- [Decision No 2014-2 of the Presidium of the Boards of Appeal of 31 January 2014 on the friendly settlement of disputes by the competent Board as amended on 1 July 2020 \("Decision on Conciliation"\)](#)
- [Conciliation request form](#)
- [Conciliation confidentiality agreement](#)



## 5. Useful EUIPO resources

### Mediators CV



**Nunzio BAMBARA**  
Nationality: Italian  
Languages: IT, EN, ES, FR, DE  
[Full CV](#)



**Christoph BARTOS**  
Nationality: Austrian  
Languages: EN, DE, ES  
[Full CV](#)



**Sophia BONNE**  
Nationality: Belgian  
Languages: NL, EN, FR, DE, ES  
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**Marita BRA**  
Nationality: Greek  
Languages: EN, FR, ES, EL  
[Full CV](#)



**Klaudia MISZTAL**  
Nationality: Polish  
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**Cinzia NEGRO**  
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**Sophie PÉTREQUIN**  
Nationality: French  
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**André POHLMANN**  
Nationality: German  
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Nationality: British  
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**Julia GARCÍA MURILLO**  
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[Full CV](#)



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**Katarzyna ZAJFERT**  
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Languages: PL, EN, ES, FR  
[Full CV](#)



## 5. Useful EUIPO resources

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### Model ADR Contractual clauses

#### Model ADR contractual clauses

The ADRS provides model ADR contractual clauses to facilitate party agreement to settle potential disputes amicably.

Parties wishing to refer to EUIPO ADR are encouraged to include an appropriate ADR clause into any commercial contract in connection with IP rights. This allows contracting parties to agree that, in case any future dispute arises, they will use an alternative form of dispute resolution (such as mediation) as a step prior to court proceedings.

The recommended clauses have been drafted with the support of the ADR Stakeholder Advisory Board (SAB), reflecting best practices for mediation and other dispute resolution modalities.

You can download the model contractual clauses [here](#)

## 5. Useful EUIPO resources

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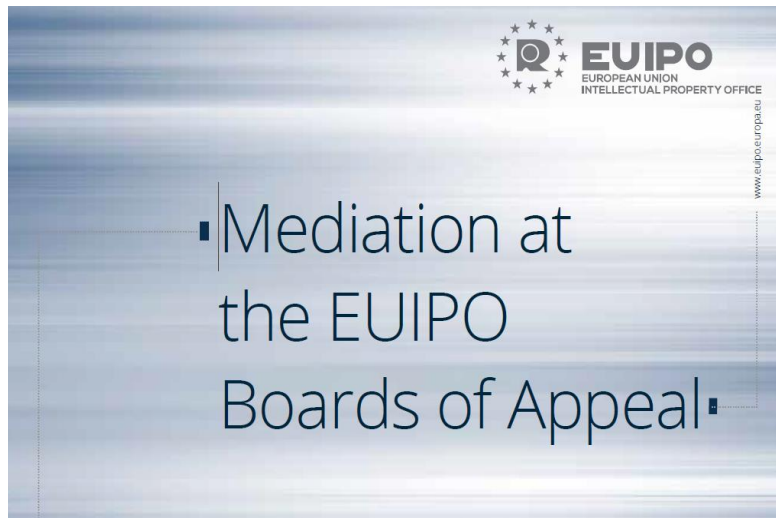
### ADR Brochure



## 5. Useful EUIPO resources

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### Mediation Brochure





# Examples



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Fb.me/EUIPcooperation



Linkedin.com/company/  
euipecooperation

[www.ariseplusipr.eu](http://www.ariseplusipr.eu)

# THANK YOU



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