



Promoting Intellectual
Property Rights in the
ASEAN Region

Topic 5: Attitudes and skills required for IP mediators

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Overview of relevant features and skills of mediator

- Confidentiality
- Independence and Impartiality
- Flexibility and Objectivity
- Active listening skills and open-ended questions
- Understanding human and business psychology
- Continuous learning and training

European Code of conduct for mediators

- mediation in civil and commercial matters
- principles for mediators
- without prejudice to national legislation or regulatory frameworks
- Possibility for codes adapted to their specific types of services or areas
- BoA EUIPO Presidium decisions



Confidentiality

Confidentiality

- **Any information disclosed in confidence to mediators by one of the parties must not be disclosed to the other parties without permission**
- **Prohibition of dissemination of any information relating to mediation**
- Mediator cannot be a witness in formal process in connection with the dispute and the mediation
- **Destruction or deletion of materials** obtained for the purpose of mediation after the termination

Confidentiality

Skills:

- develop trust to mediator and to the mediation process
- efficiently manage the process



Impartiality and Independence

Impartiality

- 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.

Skills:

- **ensure inclusivity**
- **avoid bias**
- **self-awareness**

Independence

➤ **Continuing obligation** throughout the process of mediation

The mediator must **disclose** circumstances such

- any personal or business relationship with one or more of the parties;
- any financial or other interest, direct or indirect, in the outcome of the mediation;
- the mediator, or a member of his firm, having acted in any capacity other than mediator for one or more of the parties.

Possibility of accepting a declared Col, if parties want the chosen mediator

Independence

EUIPO BoA rules

➤ **Before accepting to mediate and during the process**

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.

➤ **In the future**

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 or any related case.

Independence

Skills:

- be transparent
- build rapport
- develop trust to the process to open the way to the settlement



Flexibility and Objectivity

Flexibility

- No strict procedural rules
- Process manager
- The mediator may hear the parties separately or identify the need for a joint meeting

Skills:

- **Effectively and strategically manage the discussions towards the objective of settlement**
- **be goal-oriented, i.e. assist parties reach a settlement**

At the same time Objectivity

Ensure that all parties **understand the characteristics** of the mediation:

- the process
- the role of the mediator
- the role of the parties

Ensure that all parties have adequate opportunities **to be involved - possible power imbalances**

Skills

- **ensure trust in the process**
- **ensure satisfaction on a possible settlement**




Active listening and open-ended questions

Active listening and open-ended questions

- Discovering what may be **behind the surface of the conflict**
- **Reality testing**
- Unmasking **interests** and **needs** behind positions and strategies
- Exploration for **needs, experiences, values, assumptions**
- **Identification of common grounds** - *compatible interests while incompatible positions !*

Skills:

- **listen and understand**
- **challenging**
- **recognise common interests behind statements**
- **open clogged communication channels**



Understanding human and business psychology

Understanding human and business psychology

- **Legitimacy of feelings**
- **Forward-looking** perspective and discussion
- Opportunity for creative solutions and expansion of value
- **Mirroring effect**

Skills

- **Normalise conflict**
- **Handle emotions**
- **Strip away negative connotations**
- **Adopt positive attitude**



Continuous learning and training for further development

Development of skills

- Competent and knowledgeable in the process of mediation
- Standards and recognised accreditation schemes
- Keep continuously updated and informed
- Sharing experience with peers and attending coaching sessions

Continuous learning and training in EUIPO


All EUIPO mediators received special accreditation training

Two mock mediation trainings per year to learn through a live case scenario

All mediators have access to webinars and video sessions

Additional external trainings

Mediation coordination meetings and monthly communication for mediators



Q&A



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