

RULES OF PROCEDURE FOR IPO MEDIATION PROCEEDINGS

Pursuant to the directive under E.O. No. 523 for all departments, agencies, and government owned and controlled corporations under the executive branch to promote and encourage the use of Alternative Dispute Resolution (“ADR”) as part of the practice in resolving disputes filed before them, and also to the authority of the Director General of the Intellectual Property Office of the Philippines under Sec. 71 of Rep. Act No. 8293, also known as the Intellectual Property Code of the Philippines, the Rules of Procedure for IPO Mediation Proceedings, are hereby promulgated:

Section 1. Coverage – The following cases shall be required to undergo mediation:

- a. Administrative complaints for violation of Intellectual Property Rights (“IPV”) and/or Unfair Competition;
- b. Inter Partes cases (“IPC”);
- c. Disputes involving technology transfer payments;
- d. Disputes relating to the terms of a license involving the author’s rights to public performance or other communication of his work;
- e. Cases appealed to the Office of the Director General from decisions of the Bureau of Legal Affairs (“BLA”) and the Documentation, Information and Technology Transfer Bureau (“DITTB”); and
- f. All other cases which may be referred to mediation during the settlement period declared by the Director General.

Cases with pending application for Temporary Restraining Order/Preliminary Injunction, attachment or other ancillary remedies shall not be referred to mediation unless the parties, in joint written motion, pray that the case be made to undergo mediation.

In cases covered under par. (e), the mediation shall be referred to a mediator other than the one who mediated the case in the BLA or DITTB unless otherwise requested by both parties.

In the event the parties, after an unsuccessful mediation, advise the IPO Mediation Office of their intention to submit their dispute to arbitration, the originating office shall dismiss the case upon proof that arbitration proceedings has commenced pursuant to the pertinent rules if and when arbitration is available.

Section 2. Mandatory mediation of cases – All cases enumerated under Section 1 shall be referred to mediation. The mediator shall be selected from the list of IPO accredited mediators.

Section 3. Commencement of mediation – Upon the effectivity of these Rules, cases filed before the BLA and DITTB as well as appeals made before the Office of the Director General shall be referred to the IPO Mediation Office immediately, Provided, that in Inter Partes and IPV cases, and in appeals to the Director General, the case shall be referred to mediation only after the filing of the answer or comment to the appeal.

Any case filed before the effectivity of these Rules, wherein no decision has been rendered, may be referred to the IPO Mediation Office during the Settlement Period.

Once a case is referred to mediation, the adjudication proceedings therefore shall be suspended until the case is returned by the IPO Mediation Office for resumption of proceedings in accordance with these Rules.

The Order referring a case to the IPO Mediation Office shall indicate the specific date and time when the parties shall proceed to the Mediation Office, with or without their respective counsels. It shall also direct parties to be present before the IPO Mediation Office in person or through a duly authorized representative with a Special Power of Attorney, or if the party is a partnership, association or corporation, to be represented by an authorized representative authorized by a Secretary's Certificate or Board Resolution, with the written authority of the representative specifically stating that he or she is fully empowered to offer, negotiate, accept, decide and enter into a compromise agreement. Further, the Order shall state that a party not present in person, or in the case of a corporation, partnership or association, its most senior officer, to be reachable by phone or any communication facility during each mediation session to receive any query or other communication from the mediator or the IPO Mediation Office. A copy of the Order shall be furnished to the IPO Mediation Office.

Upon the appearance of the parties at the IPO Mediation Office, the Mediation Head or his duly authorized representative shall brief the parties on mediation as an alternative interest-based conflict resolution process and shall assist the parties in the selection and appointment of their mediator.

Before commencing the mediation process, the parties will be required to sign an agreement to mediate on an agreed date to manifest their commitment and sincerity to prepare for and engage in a meaningful settlement process.

Section 4. Venue – The mediation proceedings shall be conducted within the IPO offices. Upon the request of both parties, the Mediation Head may authorize the mediation to be conducted at any other venue, provided all related expenses, including transportation, food and accommodation, shall be borne by both parties. If change of venue is requested by one party, it must be with the other party's conformity in which case they shall agree on the terms of handling the expenses.

Section 5. Successful mediation – If the mediation is successful, the mediator shall, within five (5) days from the parties' submission of their compromise agreement, refer the agreement to the head of the originating office. The latter shall, within three (3) days from receipt of the Compromise Agreement, approve the same unless he finds the same to be contrary to law, public policy, morals or good customs, in which case he shall send the agreement back to the parties, through the IPO Mediation Office, within the same period specifying in writing his objections. Upon the parties' revision or amendment of the agreement, the same shall be returned again to the originating office for approval.

An approved Compromise Agreement shall have the effect of a decision or judgment on the case and shall be enforced accordingly in accordance with the pertinent rules of IPO and the Rules of Court.

Section 6. Non-settlement of dispute - If within sixty (60) days from referral of the case to the IPO Mediation Office the parties are unable to settle their dispute, the mediator shall declare the mediation unsuccessful and forthwith terminate the proceedings by issuing a Notice of Non-Settlement of Dispute. The period of sixty (60) days, however, may be extended for another thirty (30) days upon joint written request of parties to the originating office with the concurrence of the Mediator. Should no agreement be reached within the additional period, the mediation proceeding shall likewise be terminated.

Once the mediation proceedings are terminated, the mediator shall so advise the head of the originating office of the same by copy furnishing said office a copy of the Notice

of Non-Settlement of Dispute. Thereafter, the had of the originating office or his duly authorized representative shall set the case for pre-trial proper or further proceedings as the case maybe. If and when Arbitration is available, the parties shall be actively encouraged to submit their case to Arbitration. In the event the parties agree, they shall be referred to the IPO Arbitration Office for arbitration proceedings. However, should the parties decline, the case shall forthwith proceed with pre-trial proper.

Section 7. Mediation Fees – The Mediation Office shall fix a reasonable amount of mediation fees to charge each party upon filing of the case in the amount of Four Thousand (P4,000.00) Pesos each. The initial payment will entitle the parties to a case to have two (2) sessions of mediation conference at a maximum of two (2) hours per session. The succeeding sessions after the initial two (2) sessions shall require additional payments of Two Thousand (P2,000.00) Pesos each. The mediation fee chargeable to each party shall include mediator's fees, Mediation Office administrative fees and other related expenses.

Both parties shall pay a mediation fee before the start of the mediation session. All payments shall be given directly to the Cashier after a Statement of Account is issued by the staff of the Mediation Office. The Official Receipt issued by the Cashier shall be presented to the Mediation Office for proper recording and monitoring.

In the event that mediation is conducted outside IPO, additional expenses to be incurred by the Mediator, such as transportation, food and accommodation charges, shall be borne by the parties.

Section 8. Effect of the failure of parties to appear during the mediation – The failure of the party who initiated the case, such as the opposer, petitioner or complainant, to appear for mediation, including the meeting before the Mediation Office in accordance with Section 3 hereof, is a ground for dismissal of the case. On the other hand, if respondent fails to appear, he may be declared in default.

If circumstances warrant and on proper motion to the Mediation Head, a party absent in the succeeding mediation proceedings may be required to reimburse the other party up to treble the costs incurred, together with the attorney's fees, for that day.

A party shall also be considered absent if the representative fails to show the appropriate and valid authorization.

Section 9. Confidentiality – All mediation conferences shall be conducted in private, and the proceedings thereto, including all incidents, shall be kept strictly confidential. As such, any admission and statement made during mediation shall be inadmissible in a proceeding, unless otherwise specifically provided by law.

To safeguard the confidentiality of mediation proceedings, parties and their counsels as well as anyone present during the mediation shall not pass on any information obtained in the course of the negotiation and discussions in mediation to any other person, nor mention the same through other means and in any document or pleading, which may be ordered expunged from the records.

Section 10. Repealing Clause – All other office Memoranda, Memorandum circulars, Rules or Regulations inconsistent with these Administrative Guidelines are hereby repealed or modified accordingly.

Section 11. Separability Clause – If any action or provision of these Administrative Guidelines shall be declared unconstitutional or void by any court of competent jurisdiction, or the applicability thereof to any person or circumstances shall be held invalid, the constitutionality and validity of the remainder of these Administrative Guidelines and the applicability thereof to other persons and circumstances shall not be affected thereby, and to this end the sections and provisions of these Administrative Guidelines are declared to be severable.

Section 12. Effectively – These rules shall take effect fifteen (15) days from date of publication in a newspaper of general circulation.

Section 13. Submission to the University of the Philippines Law Center – Three (3) certified copies of these Rules shall be submitted to the office of the National Administrative Registry at the University of the Philippines Law Center.

Done this 5th day of October 2010, Makati City.

RICARDO R. BLANCAFLOR
Director General