



OFFICE ORDER 197
Series of 2010

SUBJECT: MECHANICS FOR IPO-MEDIATION AND SETTLEMENT PERIOD

Pursuant to the authority of the Director General of the Intellectual Property Office of the Philippines under Sec. 7.1 of Rep. Act No. 8293, Intellectual Property Code of the Philippines and Office Order No. 154, Rules of Procedure for IPO Mediation Proceedings, a Settlement Period is hereby declared from January 31 to February 28, 2011.

1. Referral of Cases

The concerned officials of the Bureau of Legal Affairs, DITTB and ODG are hereby directed to undertake the following activities:

- 1.1 Audit¹ and make an inventory of all the cases in their dockets;
- 1.2 Refer the following cases for mediation, subject to limitations under Section 1² and Section 3³ of the Rules of Procedure for IPO Mediation Proceedings:

¹ Audit means to check and ensure that all pleadings and orders are all attached to the records of the case

² 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

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- a. All pending cases not yet submitted for decision as of October 21, 2010; and
 - b. Cases already submitted for decision as of October 21, 2010 shall be referred to the mediation at the discretion of the referring office. These cases should still have the possibility of settlement, considering, among other factors, age of the case, relationship of the parties and other relative circumstances.
- 1.3 Closely coordinate with IPOPHL Mediation Office on the scheduling of cases for the initial Mediation Conference;
- 1.4 Issue an Order on or before December 29, 2010 referring the above-mentioned cases for mediation. The Order should be made in compliance with the 2nd paragraph of the Section 3 of the Rules of Procedure for IPO Mediation Proceedings, to wit:

“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

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.

³ 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 Parties 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 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, 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.

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 the IPO Mediation Office.”

- 1.5 Enjoin their respective docket clerks to ensure that the records of the cases are sent to the IPOPHL Mediation Office at least three (3) days before the initial Mediation Conference.

2. **Accreditation of Mediators.** In order to become an accredited mediator of the IPOPHL, one must meet the qualifications and comply with the requirements set forth below.

- 2.1 ***Qualifications of Mediators.*** An applicant must possess all of the following minimum qualifications at the time of submission of the application to join the IPOPHL Mediation Office’s List of Accredited Mediators:

- a. Have finished a bachelor’s degree, preferably engineers, psychologists, chemists, teachers, doctors, businessmen and lawyers;
- b. At least 37 years old unless by reason of his expertise, one of younger age may qualify;
- c. With good moral character;
- d. Trustworthy and able to handle confidential information;
- e. Creative in giving proper options to the parties;
- f. At least seven (7) years of experience in mediating cases or in legal practice involving intellectual property disputes; and
- g. Proficient in oral and written communication.

- 2.2 ***Requirements for Application.*** All applicants must submit the following requirements to IPOPHL Mediation Office on or before January 4, 2011:

- a. Application letter
- b. Curriculum vitae (please include character references with contact information);
- c. 1 (2 x 2 picture) and 1 (1x 1 picture) with white background; and
- d. NBI clearance.

- 2.3 ***Selection Process.*** The selection of prospective mediators shall be based on their education, training, experience, and background. There will also be a panel interview for each applicant on January 6 - 7, 2011.

Applicants shall attend an “***Integrated Mediators’ IP Rights and Skills Training***” on January 18-21, 2011;

- 2.4 ***Accreditation.*** The IPOPHL Mediation Office shall endorse the applicants who have successfully completed the required training for accreditation as IPOPHL mediators to the Director General. All accredited Mediators shall sign a contract of service indicating the terms and conditions of their accreditation, including their remuneration. For this purpose, the rules and requirements under RA 9184 and the Implementing Rules and Regulations shall be strictly observed.
- 2.5 ***Renewal of Accreditation.*** The accreditation shall last for a period of one year. Accredited Mediators who mediate at least twelve (12) cases and successfully settle at least six (6) cases shall be accredited for another year. Those who fail to mediate and settle the required number of cases shall lose their accreditation.
- 2.6 ***Scrutiny Desk and IPOPHL Employees.*** The IPOPHL Mediation Office shall designate a pool of experienced mediators and IP experts from among the IPOPHL employees to form part of the Scrutiny Desk. Upon request of the Mediator, the Scrutiny Desk shall provide advice and guidance on substantive matters as well as technical and legal issues related to the case under mediation. As a general rule, IPOPHL Employees shall not be allowed to mediate.

3. **Mechanics for the Settlement**

- 3.1 ***Conduct of Mediation.*** Mediators shall conduct mediations in accordance with the Rules of Procedure for IPO Mediation Proceedings.
- 3.2 ***Schedule of Mediation.*** The IPOPHL Mediation Office shall schedule the Mediation Proceedings of the parties. They shall inform the originating office of the specific date and time when the parties shall be first required to appear for purposes of including such information in the “Order” as indicated in item 1.4.
- 3.3 ***Supervision.*** The Mediators shall mediate cases under the supervision of the IPOPHL Mediation Office.
- 3.4 ***Period of Mediation.*** The initial mediation conference as well as all the subsequent mediation proceedings may be conducted beyond the duration of the

Settlement Period as long as the referral was made within the time specified in item 1, *Referral of Cases* of this Mechanics, provided the period prescribed in Section 6 of IPO Mediation Proceedings is complied.

3.5. ***Suspension of Adjudication.*** As indicated in Section 3 of the Rules of Procedure for IPO Mediation Proceedings, “*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.*”

3.6. ***Appointment of Mediator.*** As indicated in Section 3 of the Rules of Procedure for IPO Mediation Proceedings, “*Upon 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.*”

Should the parties fail to agree on a Mediator, each party, starting with the complainant, shall be asked to alternately delete the name of the mediator whom they do not wish to appoint from among the list of accredited Mediators. The person whose name is the last one remaining on the list shall be designated as the Mediator. In the event that such mediator is not available, they may opt to appoint the Mediation Head or choose the second remaining name in the list.

3.5 ***Authority of the Mediation Head.*** (a) For cases filed after October 20, 2010 which are required to be referred to mediation under Section 1 of the IPO Mediation Proceeding, the parties may choose the Mediation Head to mediate their case or defer the referral for mediation until the commencement of the ***Settlement Period***; (b) If the appointed mediator is absent without a reasonable cause, the parties may opt to appoint the Mediation Head or choose another Mediator from the IPOPHL Mediation Office’s List of Accredited Mediators; and (c) After a failed mediation by any of the mediators, the parties may still request the Mediation Head to further mediate the case.

4. **Payment of Mediators’ Claims**

4.1 To professionalize mediation through the accreditation of highly qualified mediators, the following mediation fees shall be collected;

4.2. Once the parties agree to mediate in accordance with Section 3 of the Rules of Procedure for IPO Mediation Proceedings, the IPOPHL Mediation Office shall issue a Statement of Account (SOA) to each party on the same day. Each party shall pay a discounted mediation fee of P1, 000.00 to the IPO Cashier. After the Settlement Period, the regular mediation fees under

Section 7 of the Rules of Procedure for IPO Mediation Proceedings shall apply;

- 4.3. Mediators shall submit a monthly Mediators' Claims to the IPOPHL Mediation Office before the 5th day of the month and their fees shall be paid every 10th day of the month. The Mediators' fee shall be paid through a check to be picked up at the Cashier's Office;

5. Mediation Report

The IPOPHL Mediation Office shall submit Mediation Report to the Director General within sixty (60) days following the expiration of the Settlement Period. The Report shall contain the accredited mediators who have mediated during the Settlement Period. It shall also include statistics of the following (a) cases referred for mediation, (b) cases where parties refused mediation, (c) settled cases; (d) unsettled cases; and (e) cases where mediation was discontinued.

After the *Settlement Period*, the IPOPHL Mediation Office shall continuously submit a Mediation Report at least once every three (3) months to the Director General with copies furnished to the originating office.

Strict compliance with this Office Order is hereby enjoined.


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Director General