



International Commercial Intellectual Property Co-Mediation Rules (European Union Intellectual Property Office Boards of Appeal (EUIPO BoA) & Shanghai Commercial Mediation Center (SCMC))

国际商事知识产权联合调解规则

(欧盟知识产权局上诉委员会和上海经贸商事调解中心)

Preamble

导语

Recognizing the common objective of properly settling international commercial intellectual property disputes involving parties from the People's Republic of China ("PRC") and the European Union ("EU"),

Convinced of the desirability of the establishment of a streamlined, impartial and efficient mediation mechanism,

Considering the necessity to strive toward facilitating and enhancing cooperation in dispute resolution between the EUIPO BoA and the SCMC,

Having agreed as follows:

为帮助中欧当事人妥善解决国际商事知识产权争议，建立有序、公正、高效的调解程序，欧盟知识产权局上诉委员会 (EUIPO BoA)(以下简称“上诉委员会”)和上海经贸商事调解中心(以下简称“调解中心”)为促进和提升双方合作，特制定本联合调解规则。

Scope of Application

适用范围

1. These Rules apply to the mediation of international intellectual property commercial disputes, including trademark, copyright and industrial design matters.

1、本联合调解规则适用于国际商事知识产权争议调解，包括商标权、著作权、工业外观设计。

2. Where the parties expressly agree to mediate in accordance with these Rules

by incorporating a mediation clause into a contract entered into between such parties, these Rules will be deemed an integral part of that contract and shall apply to any dispute that may arise out of that contract.

2、凡当事人同意在合同的争端解决条款中约定按照本联合调解规则进行调解的，本联合调解规则即应视为该合同组成部分，且由该合同引起的任何争议也应视为立即适用该联合调解规则。

Basic Principles of Mediation

调解的基本原则

3. To promote amicable settlement between or among the parties through mutual understanding and compromise, the co-mediation shall be carried out on a voluntary basis according to these Rules, under the principles of neutrality, impartiality, independence, fairness and confidentiality.

3、联合调解应依照本联合调解规则，在各方自愿的基础上，根据中立、公平、独立、保密的原则进行，以促进当事人互谅互让，达成和解。

Opting for applicable mediation rules

调解规则的选择适用

4. Unless agreed otherwise, where the parties consent to submit a dispute to the EUIPO BoA and the SCMC for co-mediation, it shall be deemed that such parties have agreed to the application of these Rules in force on the commencement date of the co-mediation.

4、除非当事人另有约定，凡当事人同意将争议提交上诉委员会和调解中心进行联合调解的，均视为同意根据联合调解开始之日的现行有效的联合调解规则进行调解。

Chapter 1

Definitions

第一章 定义

5. "Co-mediation" means, a process, irrespective of the expression used or the basis upon which the process is carried out, whereby the parties request the SCMC and the EUIPO BoA to put in place a mechanism – defined in these Rules -whereby two or more neutral third persons ("Co-Mediators") are appointed to assist them in their efforts to resolve an international commercial intellectual property dispute that has occurred between them in an amicable manner.

5、本联合调解规则所称的“联合调解”是指：当事人请求上诉委员会和调解中心依照本联合调解规则定义的争议解决合作机制，参与并指定两名或者多名中立的第三人（“联合调解员”）协助其设法友好解决国际商事知识产权争议的过程。

6. "Co-Mediation Settlement Agreement" means an international commercial

arrangement resulting from a “Co-mediation”, concluded in writing by the parties and confirmed by the mediators of the EUIPO BoA and the SCMC, the purpose of which is to resolve a dispute or disputes in the field of intellectual property.

6、本联合调解规则所称的“和解协议”是指：由上述联合调解所产生的、当事人为解决国际商事知识产权争议并经上诉委员会、调解中心的调解员确认的，以书面形式订立的国际和解协议。

7. “Place of Business” under these Rules refers to the premises in which a party to a dispute conducts its principal business and executive activities. Nevertheless,

7、本联合调解规则所称的“营业地”是指：当事人主要业务活动、经营活动的处所，但，

(a) if a party has more than one place of business, the relevant place of business is that which has the closest relationship to the dispute resolved by the Co-Mediation Settlement Agreement at the time of the conclusion of the Co-Mediation Settlement Agreement;

(1)一方当事人有不止一个营业地的，在上述和解协议达成时所确认的与争议关系最密切的营业地为营业地；

(b) if a party does not have a place of business, reference is made to the party's habitual residence.

(2)一方当事人无营业地的，以其惯常居住地为营业地。

Chapter 2

Co-mediation Procedure

第二章 联合调解程序

Section 1 Acceptance of Co-mediation

第一节 联合调解的受理

Application Approval

申请受理

8. The parties are to submit an application form for the co-mediation to the EUIPO BoA or the SCMC, accompanied by a Co-mediation Agreement, jointly signed by the parties.

8、当事人愿意以调解方式解决国际商事知识产权争议的，应当向上诉委员会和调解中心提交调解申请表，并提交各方当事人共同签署的《联合调解协议》。

9. The parties may send an application form for co-mediation and the Co-mediation Agreement jointly signed by the parties to the EUIPO BoA's official email to BoA-ADRS@euipo.europa.eu electronically and to SCMC's official email (seinfo@scmc.org.cn).

9、当事人可将调解申请表及各方共同签署的《联合调解协议》以邮件形式发送至上诉委员会的工作邮箱 BoA-ADRS@euipo.europa.eu 或调解中心的工作邮箱 seinfo@scmc.org.cn。

10. Where an application for co-mediation is made to the EUIPO BoA or the SCMC, the EUIPO BoA or the SCMC will inform each other of receipt of such application without delay and keep each posted of all relevant developments, including the appointment of co-mediators.

10、当事人向上诉委员会或调解中心提出联合调解申请后，上诉委员会或调解中心应当毫无迟延地通知对方收到该联合调解申请并向对方通报与此有关的所有进展，包括联合调解员的任命。

11. The EUIPO BoA and the SCMC are to complete the review of the application for mediation within 10 working days of receiving the application form for co-mediation and the Co-Mediation Agreement jointly signed by the parties. The EUIPO BoA and the SCMC must make a decision of acceptance of the application in writing and notify the parties within the above time limit, and are to initiate the mediation procedure in accordance with these Rules.

11、上诉委员会和调解中心应在收到当事人提交的调解申请表和《联合调解协议》的 10 个工作日内完成审核。上诉委员会和调解中心在审核通过当事人的申请后，应在上述期限内做出受理本案的书面决定，并通知各方当事人，按照《联合调解规则》启动调解程序。

12. The EUIPO BoA and the SCMC must notify the parties of the reasons for their failure to accept an application within the time limit as provided in Clause 11 if the application does not comply with these Rules. Where the application materials need to be supplemented or corrected, the EUIPO BoA and the SCMC are to provide guidance and explanations to the parties and inform the parties of the time limit for supplementing or correcting the materials.

12、经审核当事人的申请不符合《联合调解规则》的有关规定，上诉委员会和调解中心应在上述期限内通知当事人，告知不予受理的理由；对需要补正材料的，应当给予指导和释明，并告知补正材料提交的时间。

13. Where an application for co-mediation is made to the EUIPO BoA or the SCMC, such application must be made jointly by the parties by submitting the application form for co-mediation and Co-mediation Agreement (available at https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/contentPdfs/law_and_practice/mediation/mediation_joint_request_form_en.pdf; http://www.scmc.org.cn/Co-Mediation-Between-China-and-European-?_l=en).

13、当事人共同向上诉委员会或调解中心提出联合调解申请的，可在上诉委员会网址 https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/contentPdfs/law_and_practice/mediation/mediation_joint_request_form_en.pdf 和调解中

心网址 http://www.scmc.org.cn/Co-Mediation-Between-China-and-European-?_l=en
下载调解申请表和《联合调解协议》。

Commencement Date of Co-Mediation

联合调解开始日期

14. The date on which the EUIPO BoA/SCMC makes a decision for acceptance of the application in writing is to be taken as the commencement date of the co-mediation.

14、上诉委员会和调解中心向当事人作出书面受理决定书之日即为联合调解开始之日。

Section 2 Selection and Appointment of Co-Mediators

第二节 联合调解员的选（指）定

Selection and Appointment of Co-Mediators

联合调解员的选（指）定

15. Upon receiving the decision of acceptance of the application in writing made by the EUIPO BoA/SCMC, the parties will initiate the procedure for selection and appointment of co-mediators.

15、当事人在收到上诉委员会和调解中心作出的书面受理决定书后，即可进入联合调解员的选（指）定程序。

16. The Co-mediation is in principle to be conducted by two mediators, one from each of the EUIPO BoA and the SCMC.

16、联合调解原则上由两名调解员进行调解，调解员分别来自上诉委员会和调解中心。

17. The co-mediator from the SCMC may be selected by the each party from the SCMC Panel of Mediators. The parties are required to inform the SCMC of their selection of co-mediator within 10 working days following receipt a notice from the SCMC. Should the parties be unable to reach consensus on the selection of the co-mediator , the SCMC shall appoint a mediator.

17. 选择 SCMC 联合调解员的，可以由各方当事人在调解中心的《调解员名册》中选择，并在收到调解中心受理通知后 10 个工作日内反馈至调解中心。当事人无法就调解员选定达成一致的，则由调解中心指定一名调解员；

18. The parties are also to select a mediator from the EUIPO BoA from the List of ADRS Mediators (available at <https://euiipo.europa.eu/ohimportal/en/mediators>). Should the parties be unable reach consensus in respect of the selection of a co-mediator, the ADRS shall facilitate such selection.

18、当事人应在上诉委员会下列网址 <https://euiipo.europa.eu/ohimportal/en/mediators>

的调解员名册中共同选定一名调解员。当事人无法就调解员的选定达成一致的，则由上诉委员会争议解决部协助其完成调解员选定。

Abstention of Mediator

调解员的回避

19. When accepting the selection by the parties or the appointment by the SCMC, a mediator must undertake to perform his/her duties and make a declaration in writing that there is no reason for him/her to withdraw, and that there does not exist any cause for abstention. Mediators are also obligated to disclose any information that may affect their independence and impartiality when serving as mediators on the cases.

19、调解员在接受当事人选定或调解中心指定时，应保证履行职责，书面声明其不存在需要回避的事由，并披露可能影响其在该案件中担任调解员独立性、公正性的情况。

Re-selection of Mediator

调解员的重新确定

20. Should, for any reason, the mediators be unable to perform their duties, they may propose to cease to perform their duties as mediators. Under such circumstances, the parties shall have the right to elect for either a termination of the mediation procedure or a re-selection of a new mediator.

20、调解员因故无法继续履行其职责的，调解员可以提出停止履行调解员职责。在此情况下，当事人有权选择终止调解或者重新确定调解员继续调解。

21. After the party re-selects a new mediator, the mediation procedure is to resume with the consent of the parties.

21、重新确定调解员后，经当事人同意后，调解程序继续进行。

22. The time spent on the re-selection of mediator is not to be counted towards the time limit of mediation.

22、重新确定调解员的时间不计入调解期限。

Declaration of Mediator

调解员的声明

23. Each mediator shall sign a declaration of neutrality, impartiality, fairness, independence and confidentiality before the commencement of the mediation.

23、每位调解员在调解开始前应签署证明其中立、公正、独立、保密的声明。

Section 3 Initiating Mediation

第三节 调解的进行

Mediation Method

调解的方式

24. After being selected or appointed, the Co-mediator must consult with the parties and confirm the mediation arrangement in a timely manner. The mediator may advise the parties at any time to submit additional information and materials required for Co-mediation, in particular items that would facilitate the identification and resolution of the issues in dispute.

24、调解员在被选（指）定后，应当与当事人沟通协商并确认调解安排，调解员可以随时建议当事人提交进行调解所需的补充信息和资料，尤其是有助于找出争议问题、解决争议焦点的各类信息和资料。

25. The Co-mediators must conduct the mediation in a way that helps the parties to reach a settlement agreement. In the course of mediation, Co-mediators may decide to meet or get into contact with all of the parties or their attorneys concurrently or to meet or get into contact with one party or its attorney separately, except as otherwise required by the parties. Information obtained by way of any separate meeting or interaction must not be disclosed to the other party or parties without the express authorization by the party providing such information.

25、调解员应当采用其认为有利于当事人达成和解的方式进行调解。调解过程中，调解员可以同时会见和联络各方当事人或代理人，也可以单独会见和联络一方当事人或代理人，但当事人另有要求的除外。单独会见和联络中得到的信息不经提供信息的当事人明确授权，不得向其他当事人披露。

26. The Co-mediators should not give any legal advice or any other professional advice or technical advice to the parties.

26、调解员不得向当事人提供任何法律建议或者专业建议。

Time Limit for Mediation

调解的期限

27. After being selected or appointed, the mediators are to arrange the commencement date of the mediation as soon as practicable. In principle, the time limit for mediation is 60 working days, and should not exceed 100 working days except where the dispute is major or involves complex issues and more than two parties.

27、调解员应在被选（指）定后尽快安排调解时间。案件调解期限一般为60个工作日，重大、疑难、涉及超过两方当事人的案件，调解期限一般不超过100个工作日。

28. Depending on the needs of the mediation process, the time limit for mediation can be extended at the request of both parties by way of confirmation by

the ADRS and the SCMC.

28、根据调解进展的需要，经当事人申请并经上诉委员会争议解决部和调解中心确认后，调解期限可以顺延。

Location of Mediation

调解的地点

29. In principle, the location for a mediation is to be jointly decided by the Co-mediators and the parties, which may be either at the premises where the EUIPO BoA or the SCMC is located, unless the parties agree otherwise.

29、调解地点由联合调解员和当事人共同商定，可以在上诉委员会或者调解中心所在地进行。如当事人另有约定或者同意，亦可在其它地点进行。

30. The Co-mediation procedure may be carried out online in part or in its entirety.

30、联合调解可以全部也可以部分在线进行。

Termination of Mediation Process

调解程序的终止

31. The mediation process is to be terminated under any of the following circumstances:

31、出现如下情形之一的，调解程序终止：

(a)The parties have reached a settlement agreement under signature of the Co-mediators;

(1)当事人在联合调解员的支持下达成和解协议；

(b) Either party makes a declaration in writing to withdraw from the Co-mediation;

(2)任何一方当事人书面声明退出联合调解；

(c) The Co-mediators decide to terminate the mediation process, especially where they consider that continuation of the mediation is impractical or that continuation of the mediation would run counter to the purpose of the mediation.

(3)联合调解员可以决定终止调解程序，尤其是当其认为无法继续调解或继续调解将取得相反效果时；

(d) Any other circumstance that will result in the termination of the mediation process.

(4)其他导致调解程序终止的情形。

32. If the mediation is terminated as a result of the parties' failure to reach a

settlement agreement, SCMC must:

32、因无法达成和解协议致使调解终止的，调解中心应当：

(a) Re-submit the dispute to the EUIPO BoA for further handling if the dispute was referred to the SCMC for Co-mediation by the EUIPO BoA.

(1)如果争议是由上诉委员会转交至调解中心的，调解中心应将争议提交上诉委员会进行后续处理。

(b) Proceed to handle the dispute according to the arrangements agreed to between the parties.

(2)依当事人的约定处理。

Chapter 3

Mediation Fees

第三章 调解费用

Mediation Fees

调解费用

33. The mediation fees shall be borne in accordance with the rules of the mediation entity from which each of the Co-mediators has been chosen. All other expenses that accrue to the co-mediation shall be borne by the parties.

33、调解费用应根据每位被选任调解员所在调解机构的规则承担。联合调解产生的所有其他费用应由各方当事人承担。

34. If a party fails to pay the fees on time, the application for a Co-mediation is to be treated as rejected.

34、当事人不按期支付费用的，该联合调解申请视为被拒绝。

Payment of Mediation Fees

调解费用的支付

35. The case management fee and Co-mediation fees are to be borne in equal proportions by the parties, unless otherwise agreed in writing.

35、案件管理费、联合调解费应由各方当事人平均承担，除非各方当事人另有书面约定；

36. Any other types of expenses incurred by each party are to be borne as stipulated in Clause 35.

36、各方当事人参与调解活动中产生的其他开支应按前述第 35 条的规定承担。

Chapter 4

Settlement Agreement

第四章 和解协议

Conclusion of a Settlement Agreement

和解协议的达成

37. For items in respect of which the parties have reached a consensus following Co-mediation, a settlement agreement must be drawn up to document such items, signed by the parties and the Co-mediators.

37、经过联合调解后当事人达成一致意见的内容，应当制作书面和解协议，并由各方当事人与联合调解员共同在和解协议上签字。

Entry into force of the Settlement Agreement

协议的生效

38. The settlement agreement is to take effect from the date of signing by each party and the Co-mediators.

38、和解协议自各方当事人和联合调解员签字及/或盖章之日起生效。

Nature of the Settlement Agreement

和解协议的性质

39. The settlement agreement takes effect as a civil contract which the parties must implement as of the date that it takes effect.

39、和解协议具有民事合同性质，一旦生效，当事人应当按约履行。

Enforcement of Settlement Agreement

和解协议的执行

40. The settlement agreement must specify that any problems encountered in the course of implementation are to be resolved in the following manner:

40、和解协议中应当明确该和解协议执行过程中遇到的任何问题并应采用以下方式解决：

(a) The parties to the Co-mediation Settlement Agreement will apply for enforcement of the settlement agreement in accordance with the provisions of the United Nations Convention on International Settlement Agreements Resulting from Mediation ('the Singapore Mediation Convention') and the rules of procedure of the Contracting State of the Convention where the parties seek relief.

(1) 本联合和解协议当事人均同意按照《联合国关于调解所产生的国际和解协议公约》（简称《新加坡调解公约》）的规定及寻求救济所在国的程序规则申请执行和解协

议;

(b) Through handling a dispute arising in the course of enforcement as agreed by the parties.

(2) 依当事人的前述约定处理执行中出现的争议。

Chapter 5

Confidentiality

第五章 保密

41. All information concerning the dispute and relating to privacy obtained from or during the mediation are to be kept confidential.

41、调解过程及调解过程中所获取的与纠纷相关的一切信息及与隐私相关信息, 均为非公开;

42. The content of the Co-mediation Settlement Agreement should not be disclosed except as required to perform or enforce such settlement agreement.

42、除因履行或执行联合和解协议所需, 和解协议内容皆不得对外披露;

43. Any person or entity other than the parties, their agents and the Co-mediators are not permitted to attend the mediation unless such person or entity has obtained prior permission from the parties and the Co-mediators in writing.

43、唯有获得各方当事人及联合调解员的许可, 各方当事人、其代理人和联合调解员以外的人士皆不可参加调解。

44. Following the termination of the mediation, the EUIPO BoA /SCMC are not to retain any printed materials and electronic files generated during the mediation process, save for the application form for mediation submitted by the parties, the Co-Mediation agreement and the settlement agreement finally reached by the parties.

44、调解程序结束后, 上诉委员会和调解中心原则上不保留调解过程中产生的所有纸质材料和电子档案, 仅保留当事人调解申请书(表)、联合调解协议、和解协议(如有)。

Chapter 6

Supplementary Provisions

第六章 附则

Exclusion of Liability

责任豁免

45. The EUIPO BoA, the SCMC and their mediators are not to be liable to any

party for any acts made in connection with Co-mediation conducted under these Rules except for fraudulent or willfully improper acts committed during a mediation.

45、除调解程序中存有欺诈或故意的不当作为外，上诉委员会、调解中心及其调解员无须就与依照本联合调解规则进行的与联合调解有关的任何行为对当事人负责。

Obligations of the Parties

当事人责任

46. None of the parties may, in any other subsequent proceedings regarding the same dispute, invoke any proposal or suggestion, which was put forward by the Co-mediators or was likely to be considered by the other party for the purpose of reaching a settlement during the mediation as the basis for its appeal or defense.

46、各方当事人均不得在其后就同一争议进行的其他程序中，引用联合调解员和对方当事人在调解程序中提出过的或表示过愿意接受的任何以达成和解为目的的方案和建议，作为其申诉或答辩的依据。

Obligations of the Co-mediators

联合调解员责任

47. The mediator is not to serve as an arbitrator, a judge, a member of a resolution panel or attorney in any subsequent proceedings regarding the same dispute in the event that the dispute is not resolved through mediation.

47、若调解不成，调解员不得在其后就同一争议进行的其他程序中担任仲裁员、法官、决议组成员、代理人。

Right of Interpretation

解释权

48. These Rules are jointly formulated by the EUIPO BoA and the SCMC; with both having the right of interpretation. Both the Chinese and the English versions of these Rules shall be equally authentic. In the event of disagreement, both the EUIPO BoA and the SCMC shall make best efforts to reach a consensus.

48、本联合规则由上诉委员会、调解中心共同制定，并由上诉委员会、调解中心有权负责解释。本联合规则的中英文文本具有同等效力。如有歧义，上诉委员会和调解中心将尽最大努力达成共识。

Date of entry into force

施行日期

49. These Rules come into effect on 1 July 2020.

49、本规则经修订，自2020年07月01日起施行。