

[EXECUTIVE ORDER NO. 63, August 26, 2018]

IPOPHL MEMORANDUM CIRCULAR NO. 008, S. 2018

Adopted: 26 July 2018
Date Filed: 03 August 2018

WHEREAS, Republic Act No. 9285, also known as the Alternative Dispute Resolution Act of 2004, directed all government agencies to encourage and actively and actively promote the use of Alternative Dispute Resolution ("ADR") as an efficient tool and procedure for resolving disputes or cases;

WHEREAS, the Intellectual Property Office of the Philippines ("IPOPHL") enhanced its ADR Program, whereby cases filed in the IPOPHL are referred to mediation;

WHEREAS, under the current Rules and Regulations (Office Order No. 154, Series of 2010), while the referral of cases to mediation is mandatory, the actual mediation of cases is not;

WHEREAS, mediation so far has been effective and efficient in resolving IP cases filed in IPOPHL;

WHEREAS, there is a need to fully maximize the benefits of mediation, particularly, in expediting the resolution of IP cases;

NOW, THEREFORE, and pursuant to the authority of the Director General under Section 7.1 of Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines, the Rules on Mediation are hereby revised as follows:

Section 1. Coverage. The following cases shall undergo mandatory 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; and
- e) Appeals to the Office of the Director General from the decisions of the Bureau of Copyright and Other Related Rights ("BCORR"), the Bureau of Legal Affairs ("BLA"), and Documentation, Information and Technology Transfer Bureau ("DITTB").

Intellectual Property Violation (IPV) cases with application for Temporary Restraining Order/Preliminary Injunction, or attachment, or other ancillary remedies, shall not be submitted to mediation unless the parties, through joint written motion, request that the case be mediated.

Section 2. Commencement of mediation proceedings. A case filed in any of the originating bureau or an appeal to the Director General shall be submitted to the BLA's Alternative Dispute Resolution Service (ADRS) immediately after the filing of the answer or comment to the appeal. The proceeding in the originating bureau/office is suspended until the case is returned by the ADRS to the originating bureau/office.

The Order submitting the case to mediation shall direct the parties to appear before the ADRS for a pre-mediation conference on the date and time indicated therein. The parties themselves shall appear before the ADRS. Parties, including partnership, association or corporation, or any juridical person, however, may be represented. The representative(s) shall submit to ADRS proof of written authority such as Special Power of Attorney, Secretary's Certificate or Board Resolution, stating that the representative(s) is/are fully empowered to offer, negotiate, accept, decide and enter into a compromise agreement. The Order shall also state that a party not present in person, or in the case of a corporation, partnership or association, its most senior officer, should make himself reachable by phone or any communication facility during each mediation session to receive any query or other communication from the mediator or the ADRS.

During the pre-mediation conference, the parties shall be briefed on mediation process and shall be assisted in the selection and appointment of their mediator from the list of IPOPHL accredited mediators.

Section 3. Venue. The mediation proceedings shall be conducted within the IPOPHL offices. Upon the request of both parties, however, the mediation may be conducted at any venue, provided all related expenses, including transportation, food and accommodation, shall be borne by both parties or as they may agree upon.

Section 4. Mediation Fees. Each party shall pay a non-refundable fee of Four Thousand (P4,000.00) Pesos. The initial payment will entitle the parties to have four (4) sessions at a maximum of one (1) hour per session. Additional session may be held subject to payments of an extension fee of Two Thousand (P2,000.00) Pesos each party. The extension fee will entitle the parties of two (2) one-hour sessions. The mediation fees cover the mediator's compensation, administrative costs and other related expenses. Both parties shall pay the mediation fees during the pre-mediation conference. On meritorious grounds, a party may be allowed to pay the mediation fees five (5) days after the pre-mediation conference or the issuance of the Statement of Account by the ADRS.

Section 5. Effect of the failure of parties to appear during the mediation and/or pay the appropriate mediation fees. The failure of the party who initiated the case, such as the oppose, petitioner or complainant, to appear for mediation for including the pre-mediation conference without, and/or to pay the fees shall be grounds for dismissal of the case. On the other hand, if the respondents fails to appear and/or to pay the fees, he shall be declared as in default. For this purpose, a party shall be considered absent if the representative fails to show the