

The South African Institute of Intellectual Property Law

Mediation Rules

1) Definitions

In these Rules, the following words and phrases shall bear the meanings ascribed to them below:

- a) 'The Code of Ethics' means the Code of Ethics for Mediators published by the South African Institute of Intellectual Property Law as amended from time to time;
- b) 'day' or 'days' means any day other than a Saturday, Sunday or public holiday in the Republic of South Africa;
- c) 'The Institute' means the South African Institute of Intellectual Property Law;
- d) 'mediation agreement' means an agreement by the parties to submit to mediation all or certain disputes which have arisen or which may arise between them; a mediation agreement may be in the form of a mediation clause in a contract or in the form of a separate contract;
- e) 'The Rules' means these Mediation Rules published by the South African Institute of Intellectual Property Law as amended from time to time; and
- f) 'transmit' means the delivery of a document to the Institute or any other party by hand, registered post, courier, facsimile transmission or electronic transfer; provided that, if the document is delivered by facsimile transmission or electronic transfer, the original document [or a copy thereof] is delivered to the Institute or such other party, as applicable, by hand, courier or registered post within ten days of the facsimile transmission or electronic transfer.

2) The right of the Institute to delegate its powers in terms of the Rules

The Institute shall have the right to delegate any of the powers held by it in terms of these Rules to any person or body of persons whom it considers suitable whenever it considers such delegation appropriate. Such delegation may be on such terms as the Institute considers appropriate and may extend to all or any part of the powers held by the Institute in terms of these Rules.

3) The Commencement of Mediation

- a) A party to a mediation agreement that wishes to commence a mediation shall submit a request for mediation in writing to the Institute. It shall at the same time send a copy of the request for mediation to each other party to the mediation agreement.

- b) The request for mediation shall contain or be accompanied by:
 - i) the names, addresses and telephone, telefax, email or other contact details of the parties to the dispute and of the representative of the party filing the request for mediation;
 - ii) a copy of the mediation agreement; and
 - iii) a brief statement of the nature of the dispute.
- c) The date of the commencement of the mediation shall be the date on which the request for mediation is received by the Institute.
- d) The Institute shall forthwith inform the parties in writing of the receipt by it of the request for mediation and of the date of the commencement of the mediation.

4) Appointment of the Mediator

- a) The parties may agree to appoint a mediator from among those mediators accredited by the Institute.
- b) If for any reason a mediator agreed upon by the parties cannot or does not accept an invitation to mediate, the parties may agree on another mediator.

5) Procedure for Appointment of the Mediator by the Institute

- a) If, within 10 (ten) days of the Institute's receipt of the request for mediation, the parties have failed to agree on a mediator, or the mediator does not accept an invitation to mediate and the parties have failed to agree on another mediator, then either party may ask the President of the Institute (the "President") to submit to each party an identical list of names of potential mediators. Each of the potential mediators suggested by the President shall be accredited as a mediator by the Institute.
- b) Each party shall have 5 (five) days from the date upon which that party receives the list called for in a) above to cross off that list any names to which that party objects, number the remaining names in order of preference and return the list to the President. If a party does not return the list within the time specified, all of the persons named therein shall be deemed acceptable as potential mediators.
- c) The President shall then suggest to the parties in writing the name of the mediator from among the potential mediators who have been approved on both lists and having regard to the designated order of preference.
- d) If the parties fail to agree on the President's written suggestion referred to in c) above; or if the suggested mediator is unable to act; or if for any reason an appointment cannot be made from the submitted lists, the President shall appoint the mediator, without the submission of any further lists but with regard to the lists submitted in terms of b) above.

6) Role of the Mediator

- a) The mediator shall endeavour to assist the parties to settle the dispute by agreement and, unless agreed otherwise, the mediator shall not adjudicate

the dispute, recommend a solution to the dispute, advise a party on the merits of the dispute or negotiate a settlement of the dispute on behalf of a party.

- b) The mediator shall promote the settlement of the issues in dispute between the parties in any manner that the mediator believes to be appropriate, but shall have no authority to impose a settlement on the parties.

7) Conduct of the Mediation

- a) The mediator shall have the discretion to conduct the mediation of the dispute in such manner as the mediator determines.
- b) The parties shall abide by all decisions of the mediator regarding the process and conduct of the mediation.
- c) The mediator may communicate with the parties orally or in writing, together or individually, and may convene a meeting or meetings at a venue to be determined by the mediator after consulting the parties.
- d) Each party undertakes to cooperate in good faith with the mediator in the conduct of the mediation of the dispute.
- e) The mediator shall be free to meet and to communicate separately with a party on the clear understanding that information given at such meetings and in such communications shall not be disclosed to the other party without the express authorization of the party giving the information.

8) Termination of the Mediation

The mediation of the dispute shall terminate when:

- a) the mediator receives written notice from a party stating that such party withdraws from the mediation, provided that no party shall withdraw from the mediation without first orally notifying the mediator and giving the mediator a reasonable opportunity to mediate on that party's continued participation in the mediation;
- b) the parties receive written notice from the mediator stating that in the mediator's opinion there is no reasonable prospect of a settlement and therefore the mediator terminates the mediation; or
- c) the parties conclude a written agreement between themselves in which the parties set out the terms upon which the parties settle the dispute or any part thereof (the "settlement agreement"), provided that the parties and mediator may agree in writing to continue the mediation in respect of any part of the dispute that remains unsettled after the conclusion of the settlement agreement.

9) Effect of the Mediation

- a) In the event a settlement agreement is not reached in the mediation, the parties' submission of the dispute to mediation shall not prejudice any of the parties' rights.
- b) In the event the parties settle the dispute or any part thereof in a settlement agreement, then that settlement agreement shall be a final and binding

settlement of the dispute or such part thereof, as applicable.

10) Confidentiality

- a) The mediator may not disclose to any person (other than a party) any information first obtained during the mediation of the dispute without the prior written consent of the parties, unless compelled by law to do so.
- b) A party may not disclose to any person (other than the mediator or that party's professional advisors) any information first obtained during the mediation of the dispute without the prior written consent of the disclosing party, unless compelled by law to do so.
- c) The mediator may not disclose to any person (including a party) information disclosed by a party to the mediator, without the prior consent of the disclosing party.
- d) The parties agree that they will not at any time before, during or after the mediation compel the mediator to give evidence concerning information disclosed during the mediation of the dispute.
- e) Nothing in this Rule 10) shall prevent a party from placing on record after the mediation any information that is substantially similar to information disclosed by that party during the mediation, provided that party does not state or imply that such information was stated or disclosed during the mediation.
- f) No recording of any kind shall be made of any meetings of the parties with the mediator.

11) Costs

- a) The mediator shall agree his or her fee with the parties in advance of the mediation and after consultation with the Institute. Unless the parties agree otherwise in writing, the parties shall each pay half of the mediator's agreed fee. The parties shall pay to the mediator, in advance of each day's mediation, the mediator's agreed fee for that day.
- b) Unless the parties agree otherwise in writing, the parties shall each pay half of the costs of the mediation proceedings, including the costs of the venue.
- c) The mediator shall not unnecessarily incur any additional costs by way of disbursements that are to be for the account of the parties.

12) Amendments to these Rules

These Rules may be added to or otherwise amended in any way by resolution of the Institute and, as amended and after due notice of the amendment has been given to all those persons on the list of accredited arbitrators for the Institute, shall become binding upon those persons in its amended form.