



MARQUES comments on proposals concerning Mediation

In general, **MARQUES** is of the opinion, that there are other and more effective ways to achieve the intended purpose of cutting down on the number of cases referred to appeals, in particular stronger OHIM costs awards that are made more easily enforceable. As it is, entities just keep appealing, also because the costs risks of doing so are negligible.

Having said this, **MARQUES** does not favor the creation of a structured Mediation and Arbitration Center within the OHIM. As AIM has likewise remarked, an optional mediation service at the OHIM Board of Appeal level has existed since October 2011. Facts and figures currently available show that since its inception there has been very little use of such service by the OHIM users. A reason for this may be that mediation is only available at the appeal level i.e. at a stage where OHIM has already made a decision in favor of one of the parties. Accordingly, the potential users might in fact perceive that mediation would not in practice take place in a truly independent environment. Another reason may be that mediation is far from always being the most effective way to solve a dispute. Nonetheless, **MARQUES** can support that a mediation service is continued to be offered by OHIM as an option to the parties of a dispute pending before the Office. As in your suggestion, **MARQUES** sees a need for this service to be better fixed, notably that its legal basis – currently dependent on a decision made by the Presidium of the Boards of Appeal - is made explicit.

On the other side, **MARQUES** does not support that OHIM should offer any arbitration service. Mediation and arbitration are different procedures and contrary to mediation, an arbitration process can end with an arbitration award, i.e. with a decision made by the appointed arbitrator, which is not made publically available, is enforceable *inter partes*, and cannot be appealed. **MARQUES** finds that such activities cannot and shall not be carried out by OHIM.¹

Submitted by the **MARQUES** Study Task Force

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¹ Moreover, it should be noted that the reference in the proposal to the Patent Mediation and Arbitration Centre under the Unitary Patent system may not fit the case, as according to the agreement (<http://unitarypatent.org/article-35-patent-mediation-and-arbitration-centre/>) a Patent Mediation and Arbitration Centre is established as an independent facility alternative to using the Unified Patent Court. The Centre is independent and has no attachment to the patent granting authority.