

Mediation

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What is Mediation ?

lat. mediatio, mediare = divide in the middle

What is Mediation ?

Definition Webster's

intervention between conflicting parties to promote reconciliation, settlement, or compromise

What is Mediation ?

Definition Black's Law Dictionary

A method of non-binding dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution

What is Mediation ?

Mediation =

Third Party Intervention in order to solve a conflict by promoting an interest-oriented solution set up jointly by the conflicting parties

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The Mediator

- No competence to make decision
- Supporter/promoter of negotiation
- Non-party
- Develops the capability to actively empathize with each party's position
- promotes „integrative“ behaviour
- In most countries, no regulated education, no protected title

The Mediation

Overcomes the zero sum paradigm

→ mediation creates added value

or: creating sustainable win-win solutions

Advantage: avoids pure legal view on problems

The Mediation

Mediation is based on insights of

- conflict theory
- negotiation theory
- communication theory

Mediation in Process

People involved

Mediator

Conflict party 1

Conflict party 2

Mediation in Process

People involved

Mediator

Conflict party 1
Legal adviser 1

Conflict party 2
Legal adviser 2

Mediation in Process

- Opening
 - Mutual will to enter mediation
 - Choosing a mediator

Mediation in Process

- Opening
 - Mutual will to enter mediation
 - Choosing a mediator
- Getting started
 - Introduction by mediator
 - Information about mediation
 - Mediation contract (trilateral)

Mediation in Process

- Inventory
 - Collecting all the issues and problems
 - Legal questions
 - Background
 - Definition of aim(s)

Mediation in Process

- Reaching a solution
 - Brainstorming
 - Evaluation of possible solutions
 - Identifying preferred solution
 - Definition of solution
- Finalization and Codification

Mediation Issues

- Statutory limitation /forfeiture
- Enforceability
- Confidentiality

➔ cf. EU directive 2008/52/EG of 21 May 2010

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Patentanwälte

Thank you !

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