

Commercial Courts of Barcelona and Alicante get ready for the 2019 Mobile World Congress

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The Mobile World Congress ("MWC") is the largest mobile trade event in the world and one of the most significant trade fairs taking place in Barcelona. More than 105,000 people attended previous events and more than 2,400 leading companies exhibited their products. Due to its importance, all relevant institutions do their very best each year to help make the event as successful as possible. The Commercial Courts of Barcelona want to do their part in contributing to this success. Thus, for the fifth year in a row, on 13 December 2018, they adopted a Protocol that includes effective procedural measures to avoid, to the extent possible, adopting interim injunctions based on industrial and intellectual property rights (IPRs) on an *ex parte* basis and, at the same time, to ensure the adoption of effective measures to protect those IPRs. For the first time, the EU Trademark and Community Design Courts in Alicante have joined the Protocol, which will be in force in February 2019.

The 2019 Protocol specifically includes the following measures:

- Giving preferential and priority treatment to urgent applications for interim injunctions (whether or not the defendant is heard) related to technological patents and industrial designs of products which will be exhibited at the event, as well as to acts of trademark and copyright infringement, and to unfair competition and unlawful advertising acts in relation to products and materials which will be displayed at MWC Barcelona.
- Allowing those exhibitors that suspect that they could be subject to an *ex parte* application for interim injunctions based on IPRs to submit a protective letter (*escrito preventivo*). To the extent possible, Courts will admit or reject these letters within 24 hours of being filed.
- Deciding on interim injunction applications on an *ex parte* basis within 2 days of their filing at Court and, when a protective letter has been previously filed, scheduling a hearing and handing down a decision within 10 days of their submission at Court.
- Immediate enforcement by the Commercial Courts of Barcelona of the preliminary injunctions and/or urgent measures which, within the scope of their specific competence, the EU Trademark and Community Designs Courts in Alicante issue, thus guaranteeing the rapidness and effectiveness of the decisions taken in relation to these specific IPRs.

Although the 2019 Protocol only mentions interim injunction proceedings related to IPRs, in previous editions of the event the Commercial Courts of Barcelona also handled in a "fast-track" mode other kinds of civil proceedings related to such IPRs. Thus, it is likely that they do the same in the 2019 edition. This is the case, for instance, of "saisie-style" proceedings (*Diligencias de Comprobación de Hechos*), which entail a surprise inspection and the possible seizure of devices and/or materials exhibited in the stand.

The experience to date shows that parties should not leave their homework to the last minute. The granting of interim injunctions on an *ex parte* basis is the exception under the Spanish Civil Procedural Act. Accordingly, they are only granted when hearing the defendant could jeopardise the applicant's position. This means that:

- **Applicants must react quickly:** The experience to date shows that the Commercial Courts of Barcelona carefully consider whether the applicant has acted in good faith in order to assess the urgency of the case and grant interim injunctions on an *ex parte* basis. In particular, they take into account the prior behaviour of the applicant and the speed with which it has reacted after becoming aware of the possible infringement and submitting the application. In this regard, the Courts understand that, if at all feasible, the application for urgent interim injunctions must be submitted early enough so that it does not unreasonably prevent the defendant from being heard. In other words, the holder of the alleged infringed IPRs who has had prior knowledge of the possible infringement (e.g. 4 months before the MWC) should not unreasonably withhold the filing of the application until shortly before the start of the MWC in order to create an artificial situation of urgency that could have been avoided simply by filing the application beforehand.
- **Protective letters make the grant of *ex parte* preliminary injunctions less likely:** From the defendant's perspective, the Commercial Courts of Barcelona appreciate the filing of protective letters, since they allow them to know the arguments raised by the defendant before taking any decision with regard to an interim injunction application and, if necessary, to quickly summon the defendant to an oral hearing.

In conclusion, this imaginative Protocol devised five years ago appears to be here to stay.