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Innovation at the Mobile World Congress sparks innovation at Barcelona Commercial Courts

Miquel Montaña (Clifford Chance) · Friday, July 24th, 2015

Technological innovation has left deep footprints on the evolution of International Law. In the mid-1960s, in his course at The Hague Academy of International Law, professor Mouton explained that every time inventors conceived a revolutionary invention, politicians had to devise an international organization to take care of it. A classic example is the establishment of the Central Commission for Navigation on the Rhine – the first international organization in history – created in 1815, following Robert Fulton’s invention of the steamboat. Technological innovation has also left footprints on the way the courts devise procedures to improve the administration of justice. A recent example can be found in Barcelona, where its Commercial Courts have adopted a protocol for dealing with applications for preliminary injunctions during trade fairs. In particular, at this year’s Mobile World Congress, the world’s largest annual gathering for the mobile sector and related industries, which took place from 2 to 5 March 2015, the Barcelona Commercial Courts activated a special protocol to deal with potential conflicts arising at this event in relation to intellectual property rights (in particular, patents), unfair competition and unlawful advertising, and that could lead to applications for urgent interim injunctions. The purpose of the protocol was to guarantee the adoption of genuinely effective urgent interim injunctions during the Mobile Word Congress, on the one hand, and avoid the adoption of interim injunctions without hearing the defendant whenever possible, on the other. In Spain, interim injunctions can be adopted without hearing the defendant (*ex parte*) if there are grounds of urgency or if granting the hearing could compromise the effect of the interim injunction requested, provided that the general legal conditions required for the adoption of any interim injunction are also met. The protocol adopted consisted specifically of the following: 1. Granting preferential and priority processing to applications for urgent interim injunctions (with – *inter partes* – or without – *ex parte* – hearing the defendant) in relation to technological patents and industrial designs relating to products which were to be exhibited at this event; as well as acts of infringement of trademarks and copyrights, and unfair competition and unlawful advertising acts in relation to products and materials which were on display. 2. Admitting the submission of protective letters. This enables the potential defendant to make its allegations and be available to appear in Court immediately, if an application for *ex parte* interim injunctions were made. 3. Resolving on the application for *ex parte* interim injunctions within 2 days as from the date it was received by the Court. 4. If a protective letter was submitted, resolving on the application for interim injunctions within a maximum of 10 days, as from the date it was received by the Court having set a date for the hearing. 5. Assessing the urgency required for the adoption of *ex parte* interim injunctions, considering, as decisive factors, the prior conduct of the applicant and the speed with which it reacted upon discovering the

potential infringement – issues which are always decisive for this purpose. In particular, the protocol established as being especially important, the fact of whether or not the application for urgent interim injunctions was submitted sufficiently in advance so that, in good faith, this would not reasonably prevent hearing the defendant, when the applicant had prior knowledge of the potential infringement and would have been able to submit its application with sufficient time. 6.

Establishing a continuous on-demand preventive service on weekdays and at the times when public hearings are held, during the entire month of February prior to the Mobile World Congress, and from 2 to 5 March when it was underway. Despite the fact that this protocol was created specifically for the Mobile World Congress, the Barcelona Commercial Courts are considering approving similar protocols for future fairs and congresses in which conflicts may arise where intellectual property rights are at stake, requiring rapid and efficient legal protection which these courts have jurisdiction to provide. Thus, we will have to wait and see how the Barcelona Commercial Courts react when new events of this type are held, potentially entailing disputes leading to applications for urgent interim injunctions. All in all, this is just another example of the impact of technological innovation on law and judicial practices.

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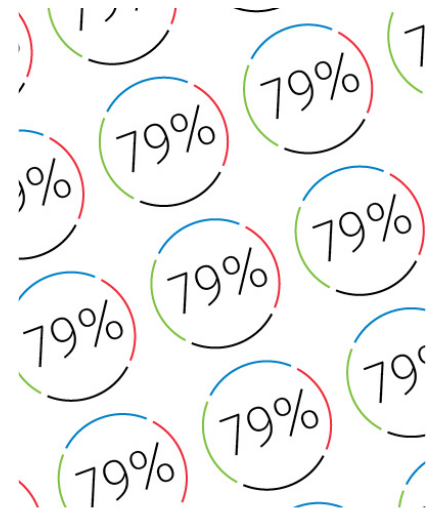
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