

# Kluwer Patent Blog

## Saisie-contrefaçon and preliminary injunction in same “pack”

Miquel Montaña (Clifford Chance) · Monday, May 29th, 2017

One of the difficulties that patent owners sometimes encounter when they are planning to apply for a preliminary injunction is the dearth of evidence. A decision handed down on 23 February 2017 by Barcelona Commercial Court No. 5 may shed some light on patent owners who need additional evidence to support an application for a preliminary injunction. The background of the case may be summarised as follows:

A company that owns patents in the telecommunications sector filed an application for a preliminary injunction prior to the 2017 Mobile World Congress (“2017 MWC”), seeking that the Court seize samples of a number of smartphones, tablets and phablets that were due to be exhibited during the 2017 MWC. Simultaneously, the applicant asked the Court to request an expert opinion to determine whether or not the samples seized fell within the scope of protection of the patents owned by the former. In the end, the applicant requested the Court to order an “ex parte” preliminary injunction preventing the defendants from exhibiting its products in the event that the requested expert opinion confirmed that the patents were actually infringed.

Although the applicant based its application on Article 732 of the Patents Act in force at that time, which deals with the procedure for applying for preliminary injunctions, the Court considered that the applicable procedure was that set out in Article 129 concerning “Diligencias de Comprobación de Hechos” (a process roughly equivalent to the French “saisie-contrefaçon” procedure). One could remark, in passing, that this is debatable, as Barcelona Commercial Court No. 2, when chaired by Justice José María Ribelles, had accepted similar petitions based on Article 732. In any event, what is relevant here is that in the above-mentioned decision of 23 February 2017, the Court agreed to follow a “two-tier” procedure, whereby an order to seize the products “ex parte” and request an expert opinion was first approved. In the same decision, the Court established that if the expert opinion confirmed that any of the patents owned by the applicant had been infringed, the Court would immediately hand down a separate decision ordering an “ex parte” preliminary injunction preventing the defendant from exhibiting the seized products during the 2017 MWC.

All in all, this case is yet another example of the creative and pragmatic line followed by the Commercial Courts of Barcelona, whose swift issuance of decisions has become another attractive reason to host the MWC in Barcelona.

To make sure you do not miss out on regular updates from the Kluwer Patent Blog, please [subscribe here](#).

## Kluwer IP Law

The **2022 Future Ready Lawyer survey** showed that 79% of lawyers think that the importance of legal technology will increase for next year. With Kluwer IP Law you can navigate the increasingly global practice of IP law with specialized, local and cross-border information and tools from every preferred location. Are you, as an IP professional, ready for the future?

Learn how **Kluwer IP Law** can support you.

79% of the lawyers think that the importance of legal technology will increase for next year.

**Drive change with Kluwer IP Law.**

The master resource for Intellectual Property rights and registration.



2022 SURVEY REPORT  
The Wolters Kluwer Future Ready Lawyer  
Leading change

This entry was posted on Monday, May 29th, 2017 at 7:26 pm and is filed under [Case Law](#), [Injunction](#), [Spain](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. Both comments and pings are currently closed.