

Kluwer Patent Blog

Busy 2018 Mobile World Congress

Miquel Montaña (Clifford Chance) · Monday, March 26th, 2018

As discussed in previous blogs, four years ago (yes, it has already been four years, *tempus fugit*) the Barcelona Commercial Court Judges who hear patent cases published a Protocol aimed at providing a quick and efficient service to participants of the Mobile World Congress (“MWC”) that takes place every year in Barcelona. The clarity provided by this Protocol, coupled with the efforts applied by our Patent Court Judges at resolving requests for protective orders and applications for preliminary injunctions as quickly as possible, has resulted in a sharp increase of cases before our Courts. From the report published on the 2018 MWC, which took place between 26 February and 1 March 2018, the following figures stand out:

1. A total of 22 protective letters (requests for protective orders) were filed. This is really remarkable, considering that only a few years ago protective letters did not even exist in Spain. They were formally introduced by the new Patent Act that came into force on 1 April 2017, although they had been previously admitted *de facto* in a handful of cases.
2. Three (3) applications for “*Diligencias de comprobación de hechos*“, an *ex parte* inspection procedure roughly equivalent to the French “*Saisie-Contrefaçon*“, were filed and resolved within 48 hours. All three of them were upheld.
3. Eight (8) applications for *ex parte* preliminary injunctions were filed, with the following result: (i) all of them were resolved within 48 hours, and all of them were upheld; (ii) in 2 cases, the defendant was allowed to substitute the preliminary injunction for a bond (the bond was actually deposited in one of the 2 cases only); (iii) in another case where an *ex parte* preliminary injunction had been ordered, the parties reached an out-of-court settlement and, as a result, the devices were returned to the exhibitor.
4. One (1) application for an *inter partes* preliminary injunction was filed. The hearing took place shortly before the congress. The preliminary injunction was ordered but the defendant was allowed to substitute it for a bond.
5. No oppositions were filed against the preliminary injunctions ordered *ex parte*.
6. In total, the three Barcelona Patent Court Judges dealt with 35 matters.

All in all, this represents a 40 % increase with respect to the previous year. In view of this dramatic increase in the number of cases, these Judges have decided to propose to the Board of the Barcelona Commercial Court Judges to set up a commission for the assessment and supervision of this Protocol. Hopefully, this will result in additional improvements.

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