

Kluwer Patent Blog

Are you getting ready for the 2022 Mobile World Congress?

Miquel Montaña (Clifford Chance) · Monday, January 17th, 2022

After the disruption brought on by the pandemic, it seems that this year the Mobile World Congress (“MWC”), the largest mobile trade event in the world and one of the most significant trade fairs held in Barcelona, will take place from 28 February to 3 March 2022 under normal conditions. Against this background, on 10 January 2022, the Boards of the Commercial Court Judges of Barcelona and the Judges of the EU Trademark Courts in Alicante held a joint meeting where they approved a Protocol setting out a number of measures aimed at expediting judicial proceedings related to the MWC. This is the 8th Protocol adopted so far (the 4th, in the case of the Alicante Judges).

Every year, the adoption of the Protocol is the kick-off for the presentation of protective writs by companies that wish to prevent unpleasant surprises during the fair.

The 2022 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 48 hours 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 speed and effectiveness of the decisions taken in relation to these specific IPRs.
- Due to the pandemic, the Judges will endeavour to organise online hearings.

The Protocol also applies to related proceedings such as “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 Procedure Act. Accordingly, they are only granted when hearing the defendant could jeopardise the applicant’s position. This means that:

- **Applicants must react quickly:** We know from experience 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*. 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.

So, are you getting ready for the 2022 Mobile World Congress?

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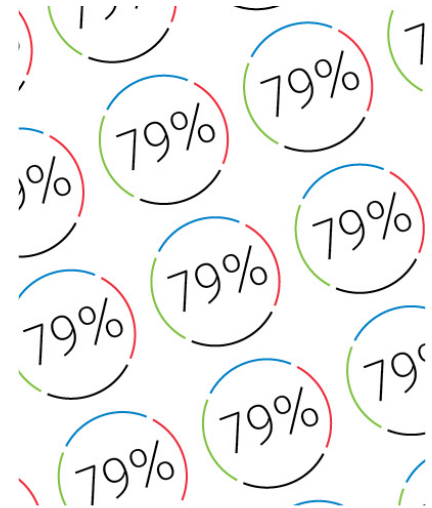
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