

## THE BARCELONA COMMERCIAL COURTS WARM UP FOR THE MWC 2018

The new edition of the **Mobile World Congress (MWC)** will take place in Barcelona from **26 February to 1 March 2018**. For the fourth year in a row, the Barcelona Commercial Courts have approved a protocol to handle event-related proceedings in a "fast-track" mode.

### THE PROTOCOL FOR MWC 2018

The MWC is one of the largest trade events taking place in Barcelona. In 2017, more than 108,000 people attended it, breaking the previous years' visitor records. Due to its importance, all relevant institutions, including regional and local governments, do their very best each year to help make the event as successful as possible.

The Barcelona Commercial Courts want to do their part in contributing to this success. Thus, they have adopted effective procedural measures to avoid (to the extent possible) adopting interim injunctions based on 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.

In particular, on 13 December 2017, the Barcelona Commercial Courts approved a Protocol, which will be in force in February and during the MWC, that specifically includes the following measures:

- 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 accept or reject these letters within 24 hours of being filed.
- Giving preferential and **priority treatment to applications for urgent interim injunctions** (whether or not the defendant is to be heard) related to technological patents and industrial designs of products which will be exhibited at the MWC 2018, 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 also be displayed at the MWC 2018.
- **Deciding on applications for interim injunction** to be granted 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 its submission at Court.

#### Key issues

- The Barcelona Commercial Courts of Barcelona approved a Protocol to handle proceedings related to MWC 2018 in a "fast-track" mode.
- The Protocol 2018, which will be in force in February 2018 and during the MWC, encompasses patents, trademarks, industrial designs and copyrights of products to be exhibited at MWC 2018, as well as acts of unfair competition and unlawful advertising with respect to products and materials to be exhibited or displayed at the event.
- The Protocol allows for the possibility of submitting protective letters to minimise the risk of the adoption of interim injunctions on an *ex parte* basis.
- Preferential treatment for urgent applications for interim injunctions
- Fast Court decisions: 1 day to accept/reject protective letters; 2 days to decide on applications for interim injunctions to be granted on an *ex parte* basis; and 10 days to hold a hearing and hand down a decision on applications for interim injunctions where a protective letter was previously submitted

Although the 2018 Protocol only mentions interim injunction proceedings related to IPRs, for previous editions of the MWC, the Barcelona Commercial Courts also handled in a “fast-track” mode other kinds of civil proceedings related to such IPRs, so it is likely that they will do the same for the 2018 edition. For example, this is the case in “saisie-style” proceedings (*Diligencias de Comprobación de Hechos*), which entail a surprise inspection and the possible seizure of devices and/or materials exhibited at the stand.

## **OUR EXPERIENCE: DO NOT LEAVE YOUR HOMEWORK UNTIL THE LAST MINUTE**

The granting of interim injunctions on an *ex parte* basis is quite exceptional under the Spanish Civil Procedural Act. Accordingly, they are only granted when hearing the defendant could clearly jeopardise the applicant's position.

- **Applicants must react quickly:** Based on our experience advising clients in previous editions of the MWC, the Barcelona Commercial Courts 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 allegedly 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 earlier.
- **Protective letters render the grant of *ex parte* preliminary injunctions an uphill battle:** From the defendants' perspective, the Barcelona Commercial Courts appreciate the filing of protective letters, since they allow them to know the arguments raised by the defendant before adopting any decision with regard to an interim injunction application and, if necessary, to quickly summon the defendant to an oral hearing.

Should you have any queries on this matter, please do not hesitate to contact us. We will be delighted to advise you should you need to file an interim injunction application, if you are keen on filing a protective letter or in the event a Court Committee visits your stand during the MWC, so that you may ensure that your attendance at the MWC 2018 will be a success.

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