

BARCELONA AND ALICANTE COURTS GEAR UP FOR THE 2020 MWC

The **2020 Mobile Word Congress** will take place in Barcelona from **24 to 27 February**. For the sixth and second years in a row, respectively, the Barcelona and Alicante Courts have approved a Protocol aimed at dealing with MWC-related proceedings in a “fast-track” mode; this time also specifically including protection for trade secrets.

THE PROTOCOL FOR THE 2020 MWC BARCELONA

The Mobile Word Congress (**MWC Barcelona**) is the largest mobile trade event in the world and one of the most important trade fairs taking place in Barcelona. Almost 109,000 people attended the 2019 edition, where more than 2,400 leading companies exhibited their products.

Due to its importance, all relevant institutions do their very best each year to help make the event as successful as possible. Barcelona’s Commercial Courts want to do their part in contributing to this success. Thus, on 15 November 2019, they adopted again a Protocol that includes effective procedural measures to avoid, to the extent possible, adopting interim injunctions based on industrial and 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. The EU Trademark and Community Design Courts in Alicante have also decided to apply the Protocol, following last year’s success.

The 2020 Protocol specifically includes the following measures:

- Giving preferential and **priority treatment to urgent applications for interim injunctions** (whether or not the defendant is heard), **pre-trial examination applications** (*diligencias preliminares*) and “saisie-style” **applications** (*diligencias de comprobación de hechos*) related to technological patents and industrial designs of products which will be exhibited at the MWC Barcelona, as well as to acts of trademark and copyright infringement, and to unfair competition and unlawful advertising acts regarding products and materials which will be displayed at the event.
- Allowing those exhibitors who 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, the Courts will admit or reject these letters within 24 hours of being filed.
- **Deciding on interim injunction applications** on an *ex parte* basis within 2 days of their filing at Court and, when a protective letter has been

Key issues

- Barcelona and Alicante Commercial Courts repeat the “fast-track” Protocol to deal with proceedings related to the 2020 MWC
- The Protocol, which will enter into force in February 2020, covers patents, trademarks, designs, copyrights and acts of unfair competition and unlawful advertising in relation to products and materials intended to be exhibited at the event
- A new aspect is that the Protocol expressly establishes the possibility to order measures to protect trade secrets within the framework of legal proceedings
- The Protocol allows the submission of protective letters to minimise the risk of the adoption of *ex parte* interim injunctions
- Urgent applications for interim injunctions and “saisie-style” applications related to the MWC will have preferential treatment
- Speedy decisions by the Courts: 24 hours to admit/reject protective letters; 48 hours to decide on “saisie-style” applications; 48 hours to decide on interim injunction applications 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

previously filed, scheduling a hearing and handing down a decision within 10 days of its submission at Court. Also **deciding on both "saisie-style" applications**, which entail a surprise inspection and the possible seizure of devices and/or materials exhibited in the stand, **and pre-trial examination applications** within 2 days of their filing at Court.

- **Ordering** (*ex officio* or at a party's request) **any needed measures to protect trade secrets** in proceedings dealing with their violation, or in proceedings of any other kind in which they may need to be considered in order to resolve the case. This novel measure has been adopted in light of the new Spanish Trade Secrets Act and the Protocol that the Barcelona Courts recently approved, specifically dealing with the procedural protection of trade secrets.
- **Immediate enforcement** by the Barcelona Commercial Courts 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** order, thus guaranteeing the rapidness and effectiveness of their decisions in relation to these specific IPRs.

THE EXPERIENCE OF OUR BARCELONA OFFICE: FAILING TO PLAN IS PLANNING TO FAIL, THUS IT IS KEY TO ALSO PREPARE LEGALLY FOR THE 2020 MWC

The granting of interim injunctions on an *ex parte* basis is quite exceptional under Spanish law and they are only ordered when hearing the defendant could clearly jeopardise the applicant's position. This means that:

- **IPR holders must react quickly:** Based on our experience gained from 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 decide whether to 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. Thus, 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 IPR holder who has had prior knowledge of the possible infringement (e.g. 3 months before the MWC) should not unreasonably refrain from filing the application until shortly before 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 granting of *ex parte* preliminary injunctions less likely:** From the defendant's perspective, the Barcelona Commercial Courts appreciate the filing of protective letters, since they enable them to know the arguments raised by the defendant before taking any decision regarding the interim injunction application and, if necessary, to quickly summons the defendant to an oral hearing.

Should you have any questions on this topic, please do not hesitate to contact us. We will be delighted to assist you in filing any interim injunctions application or protective letter or, if a Court Committee unfortunately visits your stand, to advise you on the best course of action, so that you may ensure that your attendance at the MWC Barcelona is a great success. Our Barcelona office has an experienced team of lawyers ready to help you.

CONTACTS

Miquel Montaña
Partner

T +34 93 3442 223
E Miquel.Montana
@cliffordchance.com

Josep Montefusco
Partner

T +34 93 3442 225
E Josep.Montefusco
@cliffordchance.com

Laura Cachón
Associate

T +34 93 3442 272
E Laura.Cachon
@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, Av. Diagonal 682, 08034
Barcelona, Spain

© Clifford Chance 2019

Clifford Chance, S.L.P.U.

Abu Dhabi • Amsterdam • Barcelona • Beijing •
Brussels • Bucharest • Casablanca • Dubai •
Düsseldorf • Frankfurt • Hong Kong • Istanbul •
London • Luxembourg • Madrid • Milan •
Moscow • Munich • Newcastle • New York •
Paris • Perth • Prague • Rome • São Paulo •
Seoul • Shanghai • Singapore • Sydney •
Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement
with Abuhimed Alsheikh Alhagbani Law Firm
in Riyadh.

Clifford Chance has a best friends relationship
with Redcliffe Partners in Ukraine.