

IP ENFORCEMENT AT MWC 2021: BARCELONA'S COURTS ADAPT TO THE NEW HALF-VIRTUAL FORMAT

After a one-year hiatus due to COVID-19, the **Mobile World Congress** is back with an important change: it will be both in-person and virtual. Barcelona's and Alicante's courts have just updated their fast-track protocol for dealing with MWC-related IP proceedings accordingly.

THE PROTOCOL FOR THE 2021 "NEW NORMAL" MWC

The Mobile World Congress (**MWC**) is the largest mobile trade event in the world and one of the most important trade fairs to take place in Barcelona.

MWC 2020 was cancelled due to COVID-19. MWC 2021 will be held with two significant changes: it will take place in summer instead of winter (from 28 June to 1 July 2021) and, more importantly, it will be adapted to the "new normal" by being held both in person and, for the first time, also virtually.

Due to the importance of the MWC, all the relevant institutions do their best each year to help make the event as successful as possible. Barcelona's commercial courts also do their part in contributing to this success.

Accordingly, on 5 May 2021 they adopted a protocol – for the seventh consecutive year – to:

- establish effective procedural measures to avoid, to the extent possible, adopting interim injunctions based on intellectual property rights (IPRs) on an *ex parte* basis, and
- to ensure at the same time that effective measures are adopted to protect IPRs.

The EU trademark and Community design courts in Alicante have also decided to apply the protocol, following the success in recent years.

On top of the measures already included in the 2020 protocol (which we will summarise below), this year's protocol includes some specifics aimed at adapting to the hybrid format of MWC 2021.

Specifics of the 2021 protocol for dealing with the "new normal" and the MWC 2021's semi-virtual format

The Barcelona and Alicante courts have updated the protocol as follows in order to better address the "new normal" and the new format of MWC 2021:

- Interim injunctions and other urgent measures will be extended to cover not only those activities held in person in Barcelona, but also those carried out online or through any type of virtual platform provided by the MWC's organisers.

Key issues

- Barcelona and Alicante commercial courts reinstitute the fast-track protocol for dealing with MWC-related IP proceedings
- The protocol covers patents, trademarks, designs, copyright, trade secrets and acts of unfair competition and unlawful advertising in relation to products and materials to be exhibited at the event
- The 2021 protocol specifically covers both physical and virtual activities
- The police's IT unit will enforce the measures, if necessary
- The protocol allows for the submission of protective letters to minimise the risk of interim injunctions being adopted *ex parte*
- Urgent applications for interim injunctions and "saisie-style" applications related to the MWC will have preferential treatment
- Prompt decisions by the courts: 24 hours to admit/reject protective letters; 48 hours to decide on "saisie-style" applications; 48 hours to decide on applications for interim injunction 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

- Virtual hearings are encouraged in the case of opposition to an interim injunction.
- If needed, the police's IT unit will enforce the interim injunctions or other urgent measures.
- The judges will supervise the enforcement and resolve any incidents by phone.

Standard measures included in the 2021 protocol

Like the 2020 protocol, this year's protocol 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 technology patents and industrial designs of products to be exhibited at the MWC, acts of trademark and copyright infringement, and acts of unfair competition and unlawful advertising in relation to products and materials to be promoted or displayed at the event (physically or virtually).
- 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 such letters within 24 hours of their being filed.
- **Deciding on *ex parte* interim injunction applications** within two days of their filing at court and, when a protective letter has previously been filed, scheduling a hearing and handing down a decision within 10 days of its filing at court. Also **deciding on both "saisie-style" applications**, which entail a surprise inspection and the possible seizure of devices and/or materials exhibited at the stand, **and pre-trial examination applications** within two days of their filing at court.
- **Ordering** (*ex officio* or at the request of a party) **any measures necessary to protect trade secrets** in proceedings in which they must be considered to resolve the case.
- Immediate enforcement by the Barcelona commercial courts of preliminary injunctions and/or urgent measures ordered by the EU trademark and Community design courts in Alicante within the scope of their specific competence, thereby guaranteeing prompt and effective decisions in relation to these specific IPRs.

THE EXPERIENCE OF OUR BARCELONA OFFICE: FAILING TO PLAN IS PLANNING TO FAIL, SO IT IS VITAL TO PREPARE LEGALLY FOR MWC 2021

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

- **IPR holders must react quickly:** based on our experience, the Barcelona commercial courts carefully consider whether an applicant has acted in good faith in assessing the urgency of the case and deciding whether to grant interim injunctions on an *ex parte* basis. In particular, they consider the prior conduct of the applicant and the speed with which it has reacted after becoming aware of the potential infringement. Consequently, the courts' view is that applications for urgent interim injunctions must be submitted early enough to not unreasonably prevent the defendant from

being heard, if at all feasible. In other words, IPR holders who have prior knowledge of the potential infringement (e.g. two months before the MWC) should not unreasonably refrain from filing the application until shortly before the MWC in an attempt to create artificial urgency that could have been avoided simply by filing the application earlier.

- **Protective letters make the granting of *ex parte* preliminary injunctions less likely:** in relation to defendants, the Barcelona commercial courts appreciate protective letters, since they make the arguments to be raised by the defendant known to them before they make any decision regarding the application for interim injunctions and, if necessary, allow them to quickly summons the defendant to an oral hearing.

A lot has changed since the last MWC in February 2019. In 2020 we learned that a "new normal", far more virtual, is possible and that, in spite of some inconveniences, there are numerous advantages. The new hybrid format for MWC 2021 poses new challenges – technical and legal –, but also new opportunities that, thanks to the 2021 protocol, we can help you find.

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 applications for interim injunctions or protective letters or to advise you on the best course of action if a court committee unfortunately visits your stand or a court order prevents you from exhibiting your product online, so that you can be sure that your attendance of the MWC, in person or virtually, will be a great success. Our Barcelona office has an experienced team of lawyers ready to help you.

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