

## BARCELONA'S COURTS WARM UP FOR THE 2023 MOBILE WORLD CONGRESS

A new edition of the Mobile World Congress will take place in Barcelona from 27 February to 2 March 2023. Barcelona's and Alicante's courts have just updated their fast-track protocol dealing with MWC-related IP proceedings. As a new feature, court orders could also be enforced in the metaverse.

### THE PROTOCOL FOR THE 2023 MWC

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

Due to its importance, all the relevant institutions do their best each year to make the event as successful as possible, and that includes the courts. Thus, on 1 December 2022, Barcelona's commercial courts – for the ninth year in a row – and the EU trademark and Community design courts in Alicante – for the fifth year in a row – reinstated a protocol aimed at avoiding, to the extent possible, the adoption of interim injunctions based on industrial and intellectual property rights (IPRs) on an *ex parte* basis, while ensuring at the same time that effective measures are adopted to protect those IPRs.

As on previous occasions, the 2023 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 2023 MWC, acts of trademark and copyright infringement, acts of unfair competition and unlawful advertising in relation to products and materials to be promoted or 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*), which will be admitted or rejected within 24 hours of being filed.
- **Deciding interim injunction applications** on an *ex parte* basis within 48 hours of their filing at court and, if a protective letter has been previously filed, scheduling a hearing and handing down a decision within 10 days of their submission at court.
- Also **deciding on both "saisie-style" applications**, which entail a surprise inspection and the possible seizure of devices and/or materials

#### Key issues

- Barcelona's and Alicante's courts reinstate the fast-track protocol dealing with MWC-related proceedings in the 2023 edition.
- 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 2023 protocol covers both on-site activities and those which will take place in the metaverse or any other type of environments and virtual worlds or online platforms.
- The protocol allows 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.

exhibited at the stand, **and pre-trial examination applications** within 48 hours of their filing at court.

- Extending interim injunctions, "saisie-style" and pre-trial examination orders to activities carried out **online** or through any type of **virtual platform** and, for the first time, in the **metaverse**.
- Ordering (*ex officio* or at the request of a party) any measures necessary to **protect trade secrets** in proceedings dealing with their violation or in any other type of proceedings in which trade secrets must be considered in order 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.

## **OUR ADVICE: DO NOT LEAVE YOUR HOMEWORK TO THE LAST MINUTE**

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:** Barcelona's courts, in assessing the urgency of the case and granting interim injunctions on an *ex parte* basis, carefully consider whether an applicant has acted in good faith, which means reviewing the applicant's prior conduct and the speed with which it has reacted after becoming aware of the potential infringement. In our experience, 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 a potential infringement should refrain from filing the application until unreasonably shortly before the MWC in an attempt to create an 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, Barcelona's courts appreciate protective letters since they allow them to, on the one hand, know the defendant's arguments before making any decision regarding an interim injunction application and, on the other hand, if necessary, quickly summons the defendant to an oral hearing.

Should you have any questions on this subject, please do not hesitate to contact us. We will be delighted to advise you on the best strategy to follow, regardless of whether you are an IPR holder wishing to protect your rights by filing an interim injection or a "saisie-style" or pre-trial examination application, or an exhibitor wary of receiving an unfortunate visit from the court committee and therefore considering the possibility of filing a protective letter to make your attendance at the MWC a great success.

Our Barcelona office has a highly experienced team of lawyers ready to assist you – onsite if required.

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