
URÍA MENÉNDEZ

On-call service to be offered by Barcelona and Alicante Commercial Courts during the 2019 Mobile World Congress

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1. Introduction

From 25 to 28 February 2019, Barcelona will host the Mobile World Congress (“MWC”), the world’s largest congress for the mobile industry (and its associated industries). The theme of this year’s event is ‘Intelligent Connectivity’ – the term we use to describe the powerful combination of flexible high-speed 5G networks, the Internet of Things (IoT), artificial intelligence (AI) and big data. According to official figures, MWC 2018 attracted more than 107,000 attendees from 200 countries, and it was covered by more than 3,500 journalists from all over the world. In short, the MWC is an indispensable event for all those who work in the new technologies sector.

Many of the mobile phone industry’s leading companies use the MWC to unveil their latest products and to give an insight into some of the projects they are currently developing. This showcasing of creativity and innovation is also a prime opportunity for offences to be committed in a multitude of fields, such as intellectual property, trademarks, patents, industrial designs, competition law and unfair competition, such as acts of unfair advertising. As a result, some companies may decide to take legal action and seek *inaudita parte* precautionary measures prior to filing a claim with the intention of preventing or hampering the worldwide presentation of a new product during the MWC.

In order to guarantee a fast, balanced and effective system of precautionary protection, on 13 December 2018 the Assemblies of Commercial Court Judges of Barcelona and Alicante jointly adopted an on-call rapid response protocol that will apply in February 2019. It is the first time that the Commercial Courts of Alicante adopt this protocol, while the Commercial Courts of Barcelona have adopted it in the past five years.

2. On-call rapid response protocol

The courts with jurisdiction over proceedings of this type filed during the MWC are the Commercial Courts of Barcelona or of Alicante (in the latter case when the right allegedly infringed concerns a European Union trademark or a community design).

In particular, the Assemblies of Commercial Court Judges of Barcelona and Alicante jointly adopted the following protocol:

- a) Protective letters may be filed by those who have well-founded concerns that industrial or intellectual property precautionary measures may be sought in relation to their products or services during the MWC. The aim of these protective letters is to avoid, as far as possible, the adoption of precautionary measures without the interested party being heard.
- b) Priority is to be given to the processing (with or without hearing the other party) of applications for urgent precautionary measures aimed at protecting technological innovations and industrial designs that are to be presented in the MWC; as well as claims for trademark and copyright infringements, and antitrust, unfair competition and illegal advertising actions in connection with products that are exhibited in the MWC.
- c) Judges will hand down a decision:
 - i. within two days of the filing of an application for precautionary measures when there is no hearing;
 - ii. within ten days of the filing of an application for precautionary measures when a hearing is scheduled and provided that a protective letter has been sent; and
 - iii. within 24 hours of the filing of a request for a protective letter.
- d) In order to assess if the urgency requirements that would permit the judges to adopt precautionary measures without a hearing are met, special consideration will be given to the previous conduct of the defendant. The judges will determine when the defendant could reasonably have known about the disputed matter, in order to assess whether or not the defendant could have reasonably sought interim protection. As such, the key factor is whether

the matter is urgent, or if steps could have been taken sooner, provided that the party requesting the precautionary measure has acted with the necessary diligence.

- e) The Commercial Courts of Barcelona will immediately enforce any precautionary measures and/or urgent measures that the Commercial Courts of Alicante may issue within the scope of their power (European Union trademarks and community designs), thus guaranteeing that the decisions taken are swift and effective.

As anticipated, this protocol will be in force during the month of February 2019.

The Assemblies of Commercial Court Judges of Barcelona and Alicante have submitted the protocol for approval to the High Courts of Justice of Catalonia and Valencia, and subsequently to the General Council of the Spanish Judiciary.

Contact lawyers

At Uría Menéndez we have extensive experience in the areas affected by this protocol and we have advised several clients in previous editions of the MWC. If you have any queries or you require legal advice in relation to precautionary proceedings in Spain, protective letters or the protection of intellectual property rights, please contact us. We will be pleased to assist you.



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