
URÍA MENÉNDEZ

On-call service to be offered by Barcelona and
Alicante Commercial Courts during the 2021
Mobile World Congress

May 2021

1. Introduction

From 28 June to 1 July 2021, Barcelona will host the Mobile World Congress (“MWC”), the world’s largest congress for the mobile industry (and its associated industries).

The 2020 edition of the MWC was cancelled due to the COVID-19 pandemic. This year, and despite initial uncertainty about the event, the MWC has finally been confirmed and will be, for the first time, a hybrid on-site and online event.

The theme of MWC 2021 is ‘Intelligent Connectivity’ – the term we use to describe the powerful combination of flexible high-speed 5G networks, the Internet of Things (IoT) and artificial intelligence. Additionally, this year the event will cover other themes such as ‘customer engagement’ (i.e. how to win and retain customers), entertainment, sustainability, information security and users’ privacy. According to official figures, MWC2019 attracted more than 109,000 attendees from 198 countries, and it was covered by more than 3,600 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 that 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 advertising. As a result, some companies may ask the courts to grant precautionary measures without a hearing and 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 5 May 2021 the Assemblies of Commercial Court Judges of Barcelona and Alicante jointly adopted an on-call rapid response protocol that will apply throughout June 2021 and the days on which the event takes place (i.e. from 28 June to 1 July). It is the third time that the Commercial Courts of Alicante have adopted this protocol, while the Commercial Courts of Barcelona have adopted it for the past seven 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).

Specifically, the protocol adopted by the Assemblies of Commercial Court Judges of Barcelona and Alicante provides that:

- 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 an application for any evidence gathering measures;
 - ii. within two days of the filing of an application for precautionary measures when there is no hearing;
 - iii. 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
 - iv. 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, and whether the party requesting the precautionary measure has acted with the necessary diligence.

- e) Judges will order, *ex officio* or at the request of a party, the measures necessary to protect trade secrets. These measures will be adopted in line with Spanish Law 1/2019 of 20 February on trade secrets and, in the case of the courts of Barcelona, following the special protocol adopted by the judges of Barcelona for the protection of trade secrets in the framework of court proceedings.
- f) The Commercial Courts of Barcelona will immediately enforce any precautionary measures and/or urgent measures that the Commercial Courts of Alicante issue (in relation to European Union trademarks and community designs), thus guaranteeing that the decisions taken are swift and effective.

Furthermore, and due to the exceptional situation caused by the COVID-19 pandemic and the consequent hybrid nature of the event (both on-site and virtual), in order to guarantee health security, the protocol includes the following provisions:

- a) The precautionary and urgent measures listed above may include acts of presentation, exhibition, possession, promotion or offering or sale in their face-to-face form, as well as those carried out online and on any type of virtual platform provided by the conference's organization team.
- b) Preference is to be given to electronic hearings in cases of precautionary measures with hearing the other party.
- c) The immediate and material enforcement of the precautionary measures and urgent measures that are adopted:
 - i. Will be carried out by the State Security Forces and Corps, in particular, by the specialized technology and computer unit of the Mossos d'Esquadra; and
 - ii. Will be supervised and directed by the corresponding Magistrate, who will in turn resolve *by telephone* any incident that may arise and inform the Lawyer of the Justice Administration about all the proceedings.

As anticipated, this protocol will be in force during the month of June 2021 and the days on which the event takes place, that is, from 28 June to 1 July.

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 will subsequently seek the approval of 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 measures in Spain, protective letters, the protection of trade secrets or the protection of intellectual property rights, please contact us. We will be pleased to assist you.



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