

On-call service and rapid-response protocol of the Commercial Courts of Barcelona and Alicante during the 2023 Mobile World Congress

From 27 February to 2 March 2023, Barcelona will host the **Mobile World Congress**, the world's leading congress for the mobile sector and its associated industries. In order to guarantee a fast, balanced and efficient system of precautionary protection, the Commercial Courts of Barcelona and Alicante have approved a **protocol for on-call service and rapid action**.

1. INTRODUCTION

From 27 February to 2 March 2023, Barcelona will host the Mobile World Congress ("**MWC**"), the world's leading congress for the mobile industry and its associated industries.

The MWC will this year be held in-person for the first time in two years following the COVID-19 pandemic. According to official figures, the 2019 MWC, the last on-site edition of the event, attracted more than 109,000 attendees from 198 countries and 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 technology industry.

The five themes of the 2023 MWC are 5G Acceleration, Reality+, OpenNet, Digital Everything and FinTech.

Many of the leading companies in the mobile and tech industry use the MWC to unveil their latest products and give a preview of 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 across a multitude of areas of law, 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 in order to stop a new product from being presented to the world during the MWC.

In order to guarantee a fast, balanced and effective system for precautionary protection, on 1 December 2022 the Assemblies of Commercial Court Judges of Barcelona and Alicante jointly adopted an on-call service and rapid-response protocol that will apply throughout February 2023 and the days on which the event takes place (from 27 February to 2 March). It is the fifth time that the Commercial Courts of Alicante

have adopted this protocol, while the Commercial Courts of Barcelona have adopted it for the past nine years.

2. ON-CALL SERVICE AND 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).

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

- a) Decisions on the admission of applications for protective letters must be made on the same day they are filed (i.e. within 24 hours). Protective letters may be filed during the MWC by those who have well-founded concerns that industrial or intellectual property precautionary measures may be sought, without a hearing, in relation to their products or services. The aim of these protective letters is to avoid, as far as possible, precautionary measures being adopted 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:
 - a. within two days (48 hours) of an application for a preliminary proceeding or for evidence gathering measures;
 - b. within two days (48 hours) of the filing of an application for precautionary measures when there is no hearing; and
 - c. 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.
- d) Judges will give special consideration to the previous conduct of the claimant when assessing whether the urgency requirement for adopting precautionary measures without a hearing have been met. The judges will determine when the claimant could have reasonably become aware of the disputed matter in order to assess whether or not it 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 the measures necessary to protect trade secrets *ex officio* or at the request of a party. These measures will be adopted in line with Spanish Law 1/2019 of 20 February on trade secrets and Directive (EU) 2016/943 on the protection of undisclosed know-how and business

information (trade secrets) against their unlawful acquisition, use and disclosure, and in the case of the courts of Barcelona, in line with the special protocol adopted by the judges of Barcelona for the protection of trade secrets in the framework of court proceedings.

- f) As of this year, judges will authorise the immediate execution of precautionary measures and urgent proceedings for any presentation, exhibition, promotion, offer or sale carried out or to be carried out during of the MWC via the **metaverse, virtual environments or worlds, or online platforms**.
- g) The Commercial Courts of Barcelona will immediately enforce any precautionary measures and urgent measures that the Commercial Courts of Alicante issue (in relation to European Union trademarks and community designs), thus guaranteeing that decisions are implemented swiftly and effectively.

As already mentioned, this protocol will be in force during February 2023 and the days on which the event takes place, that is, from 27 February to 2 March 2023.

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 Judiciary of Spain.

3. CONTACT LAWYERS

At Uría Menéndez we have extensive experience in the areas affected by this protocol and have advised several clients on previous editions of the MWC. If you have any queries or you require legal advice on 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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