

IP Alert

Mobile World Congress 2018 Protocol

José Miguel Lissén Arbeloa

Partner, IP-IT Practice Area, GA_P

For the fourth consecutive year, the Council of Judges of the Commercial Courts of Barcelona has agreed on the implementation of a special duty service and swift action protocol for the Mobile World Congress event to be held in Barcelona from 26 February to 1 March 2018.

According to such protocol, preferential and priority treatment will be given to urgent preliminary injunctions and other interim measures in relation to intellectual and industrial property rights, antitrust, unfair competition and unlawful advertising in connection with products or matters subject to display or exhibition in said congress.

In addition to substantially reducing the usual times for reaching a decision on these applications for interim relief, Courts will admit the filing of protective letters by those who foresee being the subject of an application for ex parte interim relief.

Moreover, title holders are advised that in order to assess the existence of urgency which is necessary to adopt ex parte interim relief, *'the applicant's previous conduct and its haste in reacting to the knowledge of the possible infringement will be decisive'*.

A full translation of the protocol into English is reproduced below.

DUTY SERVICE AND SWIFT ACTION PROTOCOL OF THE BARCELONA COMPANIES COURTS FOR THE MOBILE WORLD CONGRESS 2018

The Council of Judges of the Companies Courts of Barcelona, within the framework of the Statute of the Companies Court of First Instance of Barcelona (approved by agreement of 15 July 2014 of the Standing Committee of the General Council of the Judiciary), in its meeting of 13 December 2017.

1. WHEREAS:

The Mobile World Congress (abbrev. MWC: <http://www.mobileworldcongress.com/>), to be held from 26 February to 1 March 2018 in the city of Barcelona, is an annual congress around the field of communication and mobile telephony, and is the most important in its industry, with the greatest number of world presentations of global advances and innovations in wireless and mobile communication (technological patents); new mobile applications and, in general, last-generation software (intellectual property rights); new designs for mobile and other computing and communication devices [tablets, phablets, laptops, etc. (industrial design)]; and, ultimately, leading companies in computing, electronics and telecommunications competing in one and the same space,

WHEREFORE:

In the event of dispute between companies taking part in this event, as owners of intellectual and industrial property rights, which gives rise to an application for interim (injunctive and other) relief - as has been the case in the past; with the aim of avoiding, as far as possible, the granting of said relief without hearing the defendant (ex parte); and, at the same time, in order to ensure the granting of effective relief to protect the aforementioned rights, the Barcelona Companies Courts Judges here lay down, for the fourth consecutive year and during the month of February 2018 and the days of the event, a duty service and swift action protocol on the following terms:

- (a) To give preferential and priority treatment to urgent interim relief (whether or not ex parte) concerning patents, technological innovations and industrial designs and whose presentation is scheduled for the Mobile World Congress; as well as trade mark and intellectual property right infringement; acts of unfair competition and unlawful advertising, regarding products and materials that are the subject of display or exhibition in the same.
- (b) To undertake to resolve within two days an application for ex parte interim relief, from lodging with the court; and a maximum time limit of ten days for a

determination on the granting of interim relief with summons, from lodging with the court, provided a protective letter has been filed.

- (c) In the context of potential industrial or intellectual property-related conflict with another company and reasonable fear of being the subject of an application for ex parte interim relief, to admit the filing of protective letters with the Barcelona Companies Courts, with the aim of avoiding, as far as possible, the granting of ex parte interim relief, which will allow the defendant to, firstly, make representations and, secondly, promptly appear before the Court prior to reaching a determination on any application for ex parte interim relief.
- (d) To assess the urgency referred to in art. 733 of the Civil Procedure Act (abbrev. “LEC”) in the granting of ex parte interim relief, unless the purpose of the interim relief may be jeopardised, the applicant’s previous conduct and its haste in reacting to the knowledge of the possible infringement will be decisive. In this regard, where the owner of the allegedly infringed right had earlier knowledge of the possible infringement and could have lodged its application in good time, it will be important for the application for interim relief to have been lodged with such earliness that, in good faith, it does not reasonably hinder hearing the defendant.

2. AGREES:

- To communicate and convey the foregoing decisions and, in particular, the non-stop protective duty service, during the business days and in open-court hearing hours, throughout the whole **month of February 2018 and on the days 26 February to 1 March 2018** on the occasion of the Mobile World Congress of Barcelona, to the Governing Body of the Catalonia High Court of Justice and its President, for approval, if necessary, and for referral to the General Council of the Judiciary (abbrev. CGPJ) for the same purposes.
- To communicate and convey these agreements to the CGPJ for dissemination through the CGPJ’s website and its press office, where appropriate.