

WARMING UP BEFORE THE MOBILE WORLD CONGRESS 2022 - INTELLECTUAL PROPERTY FAST ACTION PROTOCOL

Like in previous years, the panel of Judges of the Commercial Court of Barcelona and the European Union Trademark Court in Alicante have established a Fast Action and Duty Judge Protocol (the “**Protocol**”) in the context of the Mobile World Congress 2022 that will be held in Barcelona from 28 February to 3 March 2022.

This Intellectual Property Fast Action Protocol has been applied in the Mobile World Congress since 2015 and has been highly effective at taking care of intellectual property rights (“**IPR**”). The Protocol is mainly aimed at granting, in a quick and effective manner, the interim relief required by the owners of IPRs against potential infringement acts that may take place during this event, whilst at the same time avoiding to the extent possible that measures be adopted without previously hearing the defendants’ arguments.

In particular, the Protocol, which will be effective throughout February and up to the end of the event, includes the following commitments, which the companies participating in the Mobile World Congress should bear in mind in order to be prepared for the event:

- (i) To process in a priority and preferential manner the applications for preliminary inquiries and proceedings for the verification of facts (which could entail surprise inspections of the stand and seizure of devices and materials that are being exhibited on the stand) and/or preliminary injunctions (either *ex parte* or not) based on the infringement of technological patents and industrial designs, as well as on trademark and copyright infringement, violations of competition law, unfair competition acts, and unfair advertising acts, in relation to products that are to be presented or exhibited at this event.
- (ii) To decide immediately (within 24 hours of filing) on the admission of protective letters (“*escritos preventivos*”), which can be filed by anyone who has a reasonable fear of being subject to an *ex parte* application for preliminary injunctions. The purpose of these protective letters is to provide the Judges with arguments against the granting of an *ex parte* interim injunction, that is, without the defendant being previously heard.
- (iii) To resolve any application for *ex parte* preliminary injunctions / preliminary inquiries / proceedings for the verification of facts within 48 hours from when the application is received by the court, and within 10 days for *inter partes* preliminary injunctions, provided that a protective letter has previously been filed with the court.
- (iv) To assess the urgency requirement for adopting *ex parte* preliminary injunctions by taking into account whether the applicant for the precautionary injunction could have had prior knowledge of the possible infringement and, consequently, had the opportunity to present its request beforehand. It is therefore important for the IPR holder to act as soon as it becomes aware of the

possible infringement during the MWC event and to avoid creating an artificial situation of urgency by delaying the filing of an action that could have been filed earlier.

- (v) To adopt the necessary measures to preserve the confidentiality of information that qualifies as a trade secret, according to the Spanish Trade Secrets Acts, the Trade Secrets Directive, and the Special Protocol for the Protection of Trade Secrets issued by the Commercial Court of Barcelona.
- (vi) To reinforce the cooperation between courts, so that the Commercial Courts of Barcelona can immediately enforce the aforementioned measures which are adopted by the European Union Trademark Court in Alicante, and guarantee their effectiveness.

Additionally, in view of the current COVID-19 restrictions, there is an express mention of the fact that the above measures may be requested against acts carried out online, and that virtual hearings will preferentially be held whenever deemed appropriate.

This Legal Update was prepared by Rais Amils, Álvaro de Castro and Inés Molina; Partner, Counsel and Associate of the Intellectual Property and Technology practice area.

The information contained in this Legal Update is of a general nature and does not constitute legal advice. This Legal Update was prepared on 26 January 2022 and Pérez-Llorca does not undertake any commitment whatsoever to update or review its content.

For further information,
please contact:

Eduardo Castillo

Intellectual Property and Technology Partner
ecastillo@perezllorca.com
T: +34 91 423 66 57

Rais Amils

Intellectual Property and Technology Partner
ramils@perezllorca.com
T: +34 93 269 79 07

Andy Ramos Gil de la Haza

Intellectual Property and Technology Partner
aramos@perezllorca.com
T: +34 91 423 20 72