Spanish courts are developing an increasingly specialised and flexible patent practice, with solid grounds set by the many decisions issued in the last decade by the specialised Provincial Courts of Appeals of Barcelona (15th) and Madrid (28th), revised and consolidated by increasing Supreme Court Jurisprudence.

Specialisation has been a decisive factor in such improved practice. This started with commercial courts in 2004 and was deepened in Barcelona thanks to the special arrangements agreed by the Judiciary, and was then enshrined in the new Spanish Patents Act, which entered into force last April. Accordingly, patent cases may now only be heard in nine Spanish courts (one in Valencia, three in Barcelona and five in Madrid).

A recent example of this improved practice is the flexible approach followed by the Barcelona courts in several urgent preliminary injunction proceedings brought during the Mobile World Congress (MWC) 2017 applying a special protocol agreed by the Judiciary for that event. Such protocol introduced a ‘fast-track’ procedure dealing with applications for preliminary injunctions brought during the MWC, the world’s largest exhibition and conference for the mobile industry, receiving more than 100,000 registered attendees.

Spanish courts are finding flexible ways to provide urgent protection to patentees at tradeshows like the Mobile World Congress in Barcelona

The case: Fractus SA v Shenzhen Doke Electronic Co, et al
Commercial Court No 5 of Barcelona
23 February 2017

Álvaro Velázquez explains that the Spanish patent courts are finding flexible ways to provide urgent protection to patentees at tradeshows like the Mobile World Congress in Barcelona

Accordingly, Fractus conditioned the request for a PI to urgent seizure and investigation during the first day of the tradeshow, providing the means to carry such urgent expert assessment.

Commercial Court No 5 of Barcelona, in its ruling dated 23 February 2017, allowed the proposed set-up and agreed to perform the urgent investigation using the so-called verification of facts procedure, and to issue a separate PI order on the basis of the results of such urgent investigation if this confirmed the presumed infringement.

So, that on the very first day of the show, while other exhibitors where being served PI rulings ordering seizure and withdrawal of infringing products from the MWC, Court No 5 performed a raid to seize new products shown for the first time at the show, to be urgently examined by the court-designated expert proposed by the applicant.

The day after, upon receiving the expert report confirming the infringement, the court swiftly came back to the show, to serve and enforce the injunction it had conditioned to prior to verification of facts.

The news of this swift, flexible proactive and innovative action by the Barcelona courts shows that the Spanish patent litigation system is ready to provide flexible solutions to complex patent litigation.

Author
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