

21 February 2017

Vice-President Andrus ANSIP
European Commission
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By email: cab-ansip-web@ec.europa.eu

Dear Vice-President Ansip

Digital Innovation in Europe at Risk from Patent Assertion Entities

On behalf of IP2Innovate, I write to draw your attention to an unfolding situation that if left unchecked could have a significant negative impact on Europe's Digital Single Market ambitions. IP2Innovate is a new and rapidly growing coalition of small and large companies that create innovative products and services in Europe and collectively hold thousands of European patents.

Internet and digital technologies are transforming our world, and millions of Europeans today are enjoying better health and safety, new smart gadgets and access to information on the go, shaping better lives. These technologies lie at the heart of Europe's Digital Single Market ambitions and the promise of European economic renewal and job growth.

But innovative companies in Europe, including IP2Innovate members, are facing a growing number of business threats from Patent Assertion Entities (PAEs), also known as patent trolls, that abuse Europe's patent legal system(s) for their own financial gain. These threats can cause great uncertainty in business, stifle innovation, scare investors, and generally slow the development and introduction of new products. We ask that EU policy-makers seek to understand the nature of these developments and take measures to ensure that Europe's IPR legal framework is fit for Europe's digital future.

PAEs make no contribution to European innovation

PAEs produce no products or services but exist solely as a financial play to squeeze substantial payments from successful manufacturing companies. PAEs buy up patents and use the high costs of litigation and the threat of an automatic injunction to force settlement payments by companies that either cannot afford to defend themselves or cannot risk the disproportionate remedy of having their business shut down for

infringement by a minor feature. And unlike manufacturers that assert their patents, PAEs do not face the risk of countersuit against their products or the reputational harm from bringing abusive litigation.

Europe's Patent System(s) must be capable of preventing PAE abuses

Patents support innovation by allowing companies to protect their technology from copying, to share and develop new technology, and to obtain the freedom to operate necessary to bring new products to market. To keep pace with digital innovation, Europe needs a robust, balanced and flexible patent legal system that recognises PAE abuses and has the ability to respond fairly in the common interests of European society, industry and consumers.

The Unified Patent and the Unified Patent Court will introduce many advantages over today's national and European patents, including unitary patent coverage, cost savings, efficiencies in enforcement actions and technically trained judges, amongst others. However, with its EU wide enforcement opportunities, including EU wide injunctions covering a market larger than the US, it will also offer PAEs fertile ground if the threat is not recognized and safeguards are not introduced.

Europe's Innovators are already under attack by PAEs

You may be aware that the JRC recently issued a report on Patent Assertion Entities in Europe and their impact on innovation and knowledge transfer in ICT markets. IP2Innovate commends the JRC for its interest in this area and we applaud its general descriptions of the landscape and discussion of patent quality issues. However, as companies faced directly with PAE activity, we strongly disagree with the JRC's rather hopeful conclusion that large-scale PAE assertion in Europe could be limited.

After years of successful exploitation in the US, PAEs have their eyes firmly set on Europe. This can be seen not only from pronouncements of known PAEs, but also from statistics that show a ten-fold increase in purchases of European patents over the last decade. Moreover, IP2Innovate members have directly experienced PAEs that are already adept at exploiting the rigidities of Europe's patent systems, including automatic permanent injunctions and inadequate fee-shifting. This risk will only increase with the implementation of the UPC, which will make Europe an even more attractive venue for PAE abuses.

Request for EU Action to Minimize PAE Abuses

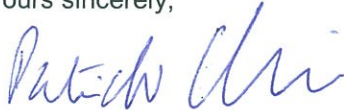
Strong patent protection is a key pillar of any technology-based economy; however it is equally important that patent protection be balanced so that it fairly rewards patent owners

without creating distortions that unjustly enrich one patent owner at the expense of innovators and society. To accomplish that goal, Europe needs a legal system that provides fair remedies for infringement that are proportional to the contribution of the patented invention.

Controlling PAE abuses will be critical in promoting innovation and ensuring strong technology markets in the EU. As a first step, IP2Innovate calls on the EU Commission to acknowledge the nature and danger of these threats to the European patent system(s). IP2Innovate can envisage several actions to help address this situation, including providing judges with greater discretion in awarding remedies, granting more complete fees to successful litigants, improving transparency of litigation-related data to monitor and analyse PAE activity, and increasing patent quality.

We look forward to hearing from you as a matter of priority as to steps you will take to ensure the EU legal system helps Europe's innovation potential to thrive. We are at your disposal to provide information on PAE lawsuits and legal threats as evidence of the critical situation unfolding in Europe and discuss solutions.

Yours sincerely,



Patrick OLIVER

Executive Director

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