

## **New report shows patent abuse is damaging digital innovation in Europe**

European innovation is increasingly under attack from patent assertion entities (PAEs) and particularly from US-based PAEs who now file the majority of PAE suits in Europe. This is the conclusion evident from the information presented by the world's leading authority in intellectual property case law data, DARTS-IP, to Europe's lawmakers, regulators and business leaders this evening.

PAEs do not innovate and do not create and sell new products. Instead, they buy up patents and profit from asserting these patents against operating companies. In pursuing this model, PAEs can exploit certain aspects of Europe's patent legal system to the detriment of Europe's innovators and the European public.

DARTS-IP's [comprehensive study](#) of the past ten years of available patent litigation data in Europe reveals increasing activity by PAEs, also commonly known as "non-practising entities" (NPEs) or "patent trolls." There has been a 20% year-on-year jump in PAE litigation. US-based PAEs initiated most of those suits (60%) and targeted applications of information and communication technologies (ICT) (75%). As application of ICT is central to innovation and growth across many industries, the consequences of these attacks will be far-reaching. Most importantly, data shows that it is not just large companies who are affected — almost a quarter of the unique defendants are European SMEs. Germany is the preferred venue, with 20% of all German patent litigation having been brought by PAEs.

Luxembourg MEP Mady Delvaux said: "The future of artificial intelligence, the internet of things and the digital economy are being put at risk. In order to prevent abuses, we need to make sure that Europe's patent legal system operates effectively for both litigants and society and supports digital innovation in Europe."

Swedish MEP Max Andersson said: "For the first time we have accurate data on the litigation practices of patent assertion entities in Europe. But this is just the tip of the iceberg. The problem of abusive patent litigation goes way deeper. We need transparency and more complete data to find solutions."

The DARTS-IP findings will be of deep concern to the European Commission following release of their November 2017 IP Communications Package.

Kevin Prey, Chairman of IP2Innovate, said: "The DARTS-IP study confirms what many in industry have suspected, that for the past few years PAE activity is on the rise in Europe. Without rigorous implementation of safeguards by Member States, abusive litigation practices will undermine European innovation. Europe's patent legal system must be able to detect and prevent these abuses. The European Commission and the Member States should move quickly to provide investors and innovators with greater protections, particularly in terms of increased transparency and litigation data. The patent system must support, not hinder, innovation and growth."

## Notes to editors

1. The full DARTS-IP report can be found [here](#).
2. IP2Innovate (IP2I) is a coalition of small and large companies that create innovative products and services in Europe and collectively hold thousands of European patents, as well as European industry groups that collectively represent 65 companies. IP2I members have directly experienced patent assertion entities that are adept at exploiting the rigidities of Europe's patent systems on automatic permanent injunctions, inadequate fee shifting and poor-quality patents. IP2I advocates for a robust, balanced and flexible patent legal system in Europe that protects innovators against abuse, works in the public interest and rewards innovators fairly.
3. Watch the video (<https://www.youtube.com/watch?v=S7TK0GkWOmk>) on Patent Assertion Entities, how they operate and how they damage innovation. PAEs exploit Europe's patent litigation system for their own financial gain at the expense of European innovation and Europe's economy.
4. European Commission's IP Package of 29 November 2017:

The IP Package of 29 November proposes a series of important safeguards that would help prevent abuse of the patent legal system in Europe. These include reaffirmation of the proportionality principle requiring that judges grant remedies adapted to the facts of the case and not issue automatic injunctions; better implementation of fee shifting; and increased transparency and litigation data.

But key issues in the IP Package need further development:

- All patents deserve safeguards, including the proportionality principle, not just Standard Essential Patents (SEPs). If some patents are left unprotected by the new safeguards, PAEs will continue targeting European manufacturers with abusive litigation practices.
  - All courts must respect the safeguards. If there is no implementation rigour across the Member States, abuse of the patent legal system in Europe will continue as PAEs take advantage of the differences in how safeguards are applied across Member States and initiate litigation in jurisdictions that give them the most leverage.
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