

COUNCIL CONCLUSIONS ON THE ENFORCEMENT OF IPR

IP2I WELCOMES COUNCIL SUPPORT FOR IP PACKAGE

CALLS ON EUROPEAN COMMISSION AND MEMBER STATES TO IMPLEMENT SAFEGUARDS TO BRING BALANCE TO EUROPE'S PATENT LEGAL SYSTEM AND PREVENT ABUSES

IP2I welcomes the recognition by the Council of the European Union in its Conclusions of 12 March 2018 that fair and effective judicial enforcement of IPR is a key lever to promote investment in innovation and growth.

However, IP2I believes the Council should have also recognised the importance of providing safeguards against practices designed to abuse specific measures, procedures and remedies of Europe's patent legal system.

The recent ground breaking [report by Darts-ip](#), the world's leading authority in intellectual property case law data, demonstrates that Europe's innovation ecosystem and Europe's operating companies are under increasing attack from Patent Assertion Entities (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.

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 by exploiting imbalances in Europe's patent system. Such abusive litigation practices by PAEs are a drain on the resources of operating companies and hamper their ability to develop new products and bring them to market in Europe.

IP2I calls on the European Commission and Member States to ensure urgent and rigorous implementation of safeguards for all patents (not just Standard Essential Patents) to bring balance to Europe's patent legal system so that it supports innovation and economic growth for the benefit of society and consumers and prevents abusive practices.

NOTES TO EDITORS:

1. 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.

2. Watch the [video](#) 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.
3. Watch the [video](#) summarising the event at the European Parliament launching the Darts-ip report.
4. Safeguards to restore balance to Europe's patent legal system:

PAEs are increasingly drawn to Europe because they have discovered that they can profitably exploit certain imbalances in the European patent legal system through abusive litigation tactics. But each of those imbalances can be corrected through reasonable safeguards that we urge the Commission and Member States to implement. These safeguards include:

- Applying the principles of proportionality and equity to the decision of whether to grant a permanent injunction in patent cases;
- Bridging the injunction gap in which an injunction follows a finding of infringement even though a validity challenge is on-going through improved case management;
- Improving patent quality;
- Making fee shifting effective by eliminating artificially-low caps and requiring that underfunded PAEs post a bond; and
- Increasing the transparency of court proceedings and the information available about patent cases.

Such safeguards will ensure a robust patent legal system that protects R&D and invention while preventing abuse that could undermine the goals of the system to encourage innovation.

5. For further information, please contact:

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