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Europe's innovators applaud high-profile debate on proportionate patent remedies to promote digital innovation

Erlangen, 25 March 2019 – In light of the considerable evidence that imbalances in Europe's patent system are being increasingly exploited by Patent Assertion Entities ("PAEs"), to the detriment of digital innovation, the industry coalition IP2Innovate welcomes the fact that leading academics, practitioners and government officials came together to explore ways to ensure consideration of proportionality in the granting of patent remedies, as required by EU law.

The International Symposium "Enforcing Patents Smoothly – From Automatic Injunctions to Proportionate Remedies", was hosted on 22 March by the Institute of Law and Technology of the Friedrich-Alexander-Universität Erlangen-Nürnberg. The conference looked at proportionate remedies as an alternative to granting automatic injunctions, which give undue leverage to PAEs. PAEs (also sometimes referred to as "Non-Practicing Entities" ("NPEs") or "patent trolls") are entities that don't invent or innovate their own patents, but buy them for the sole purpose of making money via lawsuits, thus damaging innovation.

While the EU Intellectual Property Rights Enforcement Directive (IPRED) makes a clear case for proportionate and equitable remedies granted by courts, members of IP2Innovate are concerned that these requirements are not effectively applied in many Member States. In practice, upon a finding of patent infringement, courts generally grant an immediate permanent order to remove the product from the market, without considering whether an injunction is the most appropriate and proportionate remedy in each particular case.

This practice is increasingly concerning in times of digital transformation with more and more multi-feature, integrated products incorporating thousands of patents. The leverage obtained from the threat of an injunction on a complex product can greatly exceed the value of a patent covering a minor feature incorporated into that product. This has opened the field to PAEs, whose activity in Europe is on the rise, as documented in the [recent report by Darts-ip](#).

Prof. Dr. Franz Hofmann, LL.M., Chair of Private Law, Intellectual Property and Technology Law of the Friedrich-Alexander-Universität Erlangen-Nürnberg, the organizer of the Symposium, said: *"In many EU Member States, injunctions are conceived as default remedies. Although patents are an important tool for innovation, granting an injunction irrespective of the particular facts of the case can lead to hardship. Automatic injunctions are not necessarily 'fair and equitable', as required by the EU's Intellectual Property Rights Enforcement Directive"*.

Kevin Prey, Chairman of IP2Innovate, said: *"The threat of an immediate permanent injunction is a powerful weapon when wielded by PAEs, and its availability in certain Member States is driving increased activity in Europe. We welcome the intensified debate on proportionate remedies and hope it will lead to a more effective application*

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of the proportionality principle to patent cases across European countries, as required by EU law”.

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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 direct experience with PAEs that are adept at exploiting the rigidities of Europe’s patent systems on automatic permanent injunctions, inadequate fee shifting and poor-quality patents. IP2Innovate’s mission is to bring balance to Europe’s patent legal system so that it supports innovation and economic growth for the benefit of society and consumers.
2. Read the [industry letter](#) to the European Commission, signed by 34 innovative companies and organisations, calling for guidelines to support homogenous application of proportionality principle to patent enforcement across EU countries. The industry requested that the guidelines contain a **list of factors** that courts in all Member States should consider in deciding what remedies to grant upon a finding of patent infringement, including:
 - Whether the patent owner relies on the patent to protect a market position or distinguish its products in the marketplace, or whether the patent owner’s primary business goal is to receive monetary compensation for use of the patent;
 - Whether an injunction creates leverage for the patent owner disproportionate to the value of the patented technology, such as when the infringement concerns a minor feature of a complex product;
 - The impact of the injunction on the defendant compared to the benefit to the patent owner;
 - The impact of the injunction on the public and third parties.
3. Watch the [video](#) on how PAEs operate and how they damage innovation. PAEs do not innovate and do not create and sell new products. They are financial vehicles that buy up patents and profit from asserting these patents against operating companies. Their business model relies heavily on making threats to operating companies that must then choose to employ significant and financial resources to fight their claims or to settle them with payments or licenses dictated by PAEs. In pursuing this model, PAEs exploit Europe’s patent litigation system for their own financial gain at the expense of European innovation and digital economy.

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