

19 September 2019

Sylvie Goulard

Commissioner-designate for Internal Market

Dear Commissioner-designate Goulard,

On behalf of IP2Innovate, I write to congratulate you on your appointment as the EU Commissioner for Internal Market. You arrive at a moment when global competition in information and communications technologies (ICT) is on the cusp of great change, and Europe's competitiveness depends on its ability to harness the full scale and capability of its internal market.

IP2Innovate is a rapidly growing coalition of companies from different sectors that create innovative products and services in Europe and collectively hold thousands of European patents, together with European industry groups that represent in total over 65 companies. Our members include: Adidas, Atos / Bull, Daimler, Dell, Freebox, Google, Intel, Microsoft, Proximus, SAP, Spotify & Wiko.

Commission President-elect Ursula von der Leyen in her mission letter has tasked you with putting in place the right framework to allow Europe to make the most of the digital transition. As part of that mission, you have been asked to *"take a close look at [EU's] intellectual property regime to ensure that it is coherent, is fit for the digital age and supports our competitiveness."*

An important prerequisite for Europe to be able to compete globally in the next frontier of technologies, such as blockchain and artificial intelligence, is an effective and balanced patent legal system that is adapted to the digital age and enables innovators to scale up and bring new products to market rapidly. Unfortunately, the experience of our member companies is that Europe's patent system presently lacks this necessary balance with the consequence that investment in innovation is undermined to the detriment of both the public and Europe's competitiveness.

Whereas many of the tools to address the imbalances in Europe's patent system are in place, they have not been appropriately applied by the Member States. This is particularly the case for the proportionality principle which is set out in Article 3 (2) of the Directive on the Enforcement of Intellectual Property Rights (IPRED).

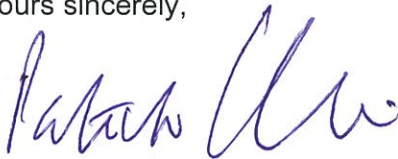
In the digital age, products are increasingly complex, often covered by thousands of patents, which make them constantly subject to patent disputes. Because the practice of many European courts is to issue automatic injunctions upon a finding of infringement, without considering a remedy that could be more proportionate, an accidental infringement of just one patent among many others can result in removing from the market a product necessary to access digital goods or services.

This situation makes Europe more and more attractive to Patent Assertion Entities (PAEs), also known as “patent trolls”¹. These entities buy up patents only to assert them against innovative companies, including SMEs, and extract high settlement fees not based on the value of the underlying invention but rather based on the damage that would result from the removal of the entire product from the market. The ICT-industry, central to growth and innovation across many industries, is particularly targeted by PAEs which neither make nor sell any products, and do not innovate.

Throughout your career you have demonstrated the will and ambition to build a more competitive Europe. We hope the European Commission will under your leadership take concrete steps to bring greater balance to Europe’s patent legal system to support our region’s digital growth ambitions and secure our competitiveness in critical technology sectors.

We stand ready to work with you and your team on specific solutions to prevent PAEs from further exploiting the legal system to the detriment of Europe’s digital economy.

Yours sincerely,



Patrick Oliver

Executive Director

¹ According to Darts-ip’s comprehensive study of the past ten years of available patent litigation data in Europe, there has been a 20% year-on-year jump in PAE litigation – “NPE litigation in the European Union. A statistical overview”, February 2018.