

PRESS RELEASE

Wide cross-section of industry urges the European Commission to take action to stop Patent Assertion Entities from gaming the patent system in Europe

Brussels, 17 January 2020

Thirty-five companies and four industry groups representing over 150 companies from different industry sectors, have written to European Internal Market Commissioner Thierry Breton, urging him to take action to clamp down on Patent Assertion Entities (PAEs) – otherwise known as “patent trolls”.

“The experience of our member companies indicates that Europe’s patent system is not working properly and is undermining Europe’s ability to compete globally in the next frontier of technologies,” said Patrick Oliver, Executive Director of IP2Innovate, one of the industry groups that signed the [letter](#).

“The European Commission needs to take steps to stop PAEs from gaming the patent system. We are urging Commissioner Breton to draft a set of guidelines that address imbalances in the patent system – in particular guidelines that support the application of a proportionality requirement in patent enforcement by judges around Europe, as required by EU law,” Mr Oliver added.

Many European courts issue automatic injunctions upon a finding of a patent infringement, without considering a remedy that could be more proportionate. So for example, an unintentional infringement of just one patent among many others could result in a popular product being withdrawn from the market.

PAEs don’t invent, build or sell anything. They just buy up patents 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.

“As litigation by PAEs has slowed in the US we have witnessed its rise in Europe,” Mr Oliver said, adding: “It’s not just big firms that are targeted – SMEs are also picked on by PAEs. Unjustified product withdrawals can sink a company. They also deprive the public of consumer choice and the benefits of innovation.”

Clear enforcement guidelines would help ensure Member States apply EU law properly. They would also bring more balance to the patent system and help avoid disproportionate outcomes and abusive litigation practices, Mr Oliver said.

“We stand ready to work with the Commissioner and his team on specific solutions to prevent PAEs from further exploiting the legal system to the detriment of Europe’s digital economy,” he said.

Notes to editors:

1. The letter to Commissioner Breton and full list of signatories 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. Our members include: Adidas, Amadeus, Atos / Bull, Daimler, Dell, Freebox, Google, Intel, Microsoft, Nvidia, Proximus, SAP, Spotify & Wiko.

IP2I is concerned about a number of imbalances in Europe's patent legal system that are being exploited to the detriment of innovation and growth in Europe. The exploitation of these imbalances is in particular shown by the rise of litigation related activity by Patent Assertion Entities (PAEs) in Europe.

3. European Commission's IP Package of 29 November 2017:

In its IP Package of 29 November 2017, the Commission acknowledged that there are differences in the way Member States apply certain provisions of the EU Directive on IPR enforcement (IPRED) (such as those on injunctions) across the Single Market, thereby limiting the effectiveness of the Directive. The Commission therefore undertook to "work with Member States' national experts and judges on further, more targeted guidelines, to give more detailed and practical guidance on specific IPRED issues, based on best practices experience" ([here](#), p. 29) with a view to improving the system of judicial enforcement in the EU.

Two years after the publication of the IP Package, the thirty-four companies and four associations signatories to the letter to Commissioner Breton call on the European Commission to expand its work with Member States, judges and stakeholders to publish targeted guidelines to support the homogenous and effective application of the proportionality principle to patents.

4. For further information, please contact:

Patrick Oliver
Executive Director, IP2Innovate
Email: contact@ip2innovate.eu
Mobile: +32-477-597065