

ANDRUS ANSIP

VICE-PRESIDENT OF THE EUROPEAN COMMISSION

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Mr Patrick OLIVER  
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Dear Mr Oliver,

I would like to thank you for your letter of 21 February 2017 outlining your concerns regarding threats from Patent Assertion Entities (PAEs). This issue is indeed regularly discussed across Commission services.

I share your enthusiasm about the entry into operation of the unitary patent package – expected for the end of this year – which will offer European companies and especially SMEs a European playing field with almost EU-wide coverage. In this context, a central jurisdiction, the Unified Patent Court (UPC), will be competent for dealing with disputes relating to the unitary patent and also to classical European patents. This new system will bring many advantages to innovators in terms of cost, simplification of procedure and enforcement of rights.

The Commission is aware of the business models and the enforcement activities of Patent Assertion Entities (PAEs) in Europe. While the order of magnitude of the issue is much more important in the USA, it is true that the phenomenon is also increasing on this side of the Atlantic and therefore should indeed be fully monitored.

I take note of your proposed actions aimed at offering judges the discretion to grant injunctions, ensuring more comprehensive damages at a European level, transparency in decisions by European courts and a high quality in the patents granted in Europe.

We do, however, believe that most of these actions are either already in place or should be completed with the coming into being of the UPC.

Firstly, unitary patents - as well as existing European patents – will be granted by the European Patent Office (EPO), which is recognised worldwide as one of the most demanding patent offices when it comes to the granting of patents. However, should the quality of specific patents ever be in doubt, then the opposition procedure at the EPO, as well as decisions of the UPC, could overrule patents granted incorrectly.

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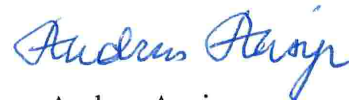
Secondly, the UPC will also have discretion to weigh up the interests of parties, and in particular the possibility, before issuing an injunction, of taking into account potential harm to the defendant. The Court will also be entitled to adequately compensate a successful party which has suffered from the activities of another party.

Thirdly, the Court of Justice of the EU has provided certain safeguards that also apply to proceedings before the UPC. These prevent abusive injunctions by all companies (including PAEs) holding standard essential patents, i.e. patents covering technology which everyone in an industry needs to implement in order to build products complying with standards such as WiFi or 4G.

Finally, the decisions of the UPC will be published and will be freely accessible through the registrar of the Court.

For the above reasons, I believe that the unitary patent package offers sound guarantees to avoid productive European companies being unduly challenged by PAEs.

Yours sincerely,



Andrus Ansip