

IP2Innovate calls for safeguards to ensure Europe's patent system supports innovation

The goal of Europe's patent legal system is to support innovation and growth. But today's patent system contains a number of imbalances that are being exploited by patent assertion entities (PAEs) that hijack the system through abusive litigation practices to the detriment of Europe's innovators and the public. In its most recent position paper, '[Supporting Innovation in Europe Through a Balanced Patent System](#)', IP2Innovate calls on European policymakers to introduce safeguards to bring balance to Europe's patent system and address the root causes of abusive PAE litigation practices.

The paper is a detailed response to the IP Package published by the European Commission last November and provides recommendations in light of the Commission's effort to develop further guidance on the Directive on the enforcement of IPR (IPRED).

The growth of PAEs in Europe is a sign of imbalance in the patent system

The rise in patent litigation brought by patent assertion entities (PAEs) in Europe, documented in the [recent report by Darts-ip](#), is an alarming trend signalling imbalances in Europe's patent system. PAEs are financial vehicles that buy patents for the sole purpose of asserting them against Europe's innovators to obtain the highest possible payment, thus harming Europe's innovation and growth.

PAEs are increasingly drawn to Europe because they have discovered that they can profitably exploit certain features of the system, such as: injunctions automatically awarded upon a finding of infringement, the injunction gap in which an injunction follows a finding of infringement even though a validity challenge is on-going, low quality patents, ineffective fee shifting provisions, and lack of transparency in court proceedings.

But each of these imbalances can be corrected through reasonable safeguards, such as: applying the principles of proportionality and equity to injunctions; bridging the injunction gap; improving patent quality; eliminating low caps on fee-shifting and requiring that underfunded PAEs post a bond; and increasing the transparency of patent litigation data.

A balanced European patent legal system is essential to support innovation

Patrick Oliver, Executive Director of IP2Innovate, said: *"Imbalances and flawed policies will foster abusive litigation practices against the very innovators that the patent system is supposed to support. The rise in European patent litigation involving PAEs is a clear signal of these imbalances and requires urgent action by EU policy*

makers. IP2Innovate stands ready to work with the Commission and Member States to support safeguards through further IPRED guidance to ensure Europe's patent ecosystem supports rather than undermines innovation.”

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. 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. Watch the [video](#) on Patent Assertion Entities, how they 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.
3. The report titled "[NPE Litigation in the European Union](#)" released by Darts-IP in February 2018 provides the most comprehensive study of the problem to date. Key findings of the Darts-IP report include:
 - Between 2007 and 2017, the average annual growth rate of actions related to PAEs was 19%. The growth in PAE-related cases beginning in 2014 has been especially dramatic, with 2017 showing the largest number of cases ever.
 - Nearly 20% of infringement actions in Germany were initiated by PAEs.
 - The five most active PAE companies in the EU are based in the United States. They account for 60% of PAE-related litigation in the EU.
 - PAE litigation impacts companies of all sizes. 23% of unique defendants in PAE cases are SMEs.
 - PAEs bring weaker cases than operating companies. PAEs win on infringement less often and lose on validity more often than non-PAEs.
4. For further information, please contact:

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