

Innovation in the EU Single Market is being undermined IP2Innovate calls for an effective application of IP enforcement rules to all patents

As the European Commission will soon set out how the EU Single Market can be strengthened, 25 years after its establishment, IP2Innovate, a cross-industry coalition of small and large innovative companies, is calling for consistent and effective application of the EU IPR rules to patents in all EU countries, to the benefit of Europe's innovators.

At present, innovation in the EU Single Market is being undermined because certain requirements of the EU Directive on IPR enforcement are not applied in practice to patents. While the Directive requires that remedies granted by courts must be proportionate to provide for safeguards against abuse, in many Member States upon a finding of patent infringement, courts generally issue 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. The threat of an automatic injunction without consideration of proportionality is a powerful weapon when wielded by patent assertion entities or "patent trolls" who seek to force settlements based on the damage that would result from an automatic injunction removing the accused product from the market. Patent trolls seek and obtain injunctions even when they make and sell no product, the patent covers only a trivial aspect of the accused product, or the patent's validity is doubtful or not yet decided. Such practices discourage R&D investments, slow innovation in Europe, and are harmful to consumers.

In a [recent letter](#) to the European Commission and to EU Member States, IP2Innovate called upon Member States to work together with the Commission to exchange best practices in order to ensure a consistent and effective application of EU IPR rules in relation to patents to promote the integrity and smooth functioning of the Single Market and innovation and growth in Europe.

Patrick Oliver, Executive Director of IP2Innovate, said: *"EU rules are not being effectively and consistently applied to patents in all EU countries. This undermines innovation in the EU Single Market and fosters abusive litigation practices by patent trolls against the very innovators that the patent system is supposed to support. We call on the European Commission to work with Member States to ensure EU rules are properly and effectively applied"*.

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 attacks by Patent Assertion Entities that are adept at exploiting the fact that EU IPR rules are not being properly and consistently applied. IP2Innovate's mission is to work with policymakers to ensure EU IPR rules are effectively applied to all patents to ensure Europe's patent eco-system 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 key element of the EU's IPR rules that are not being applied relates to Article 3(2) of the Directive on IPR enforcement of 2004 that requires that remedies granted by courts on the finding of infringement have to be proportionate. This requirement of proportionality is not effectively applied in practice as in many Member States, upon a finding of infringement, courts issue an immediate permanent order (an injunction) to remove the product from the market, without considering whether this order is the most appropriate and proportionate remedy in each particular case. The issuance an automatic injunction without consideration of proportionality (or the threat of an automatic injunction) is a powerful weapon in the hands of PAEs, and results in forcing operating companies to pay high settlement fees which are divorced from the value contributed by the patent.
4. Following a [call from the Member States](#) to carry out an analysis on the state of enforcement and application of internal market rules, the European Commission is currently working on a Single Market Communication, planned for publication on 21 November 2018. The Communication will assess the remaining barriers to the Single Market, take stock of the achievements to date and suggest options for future policy action.
5. For further information, please contact:

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