

PRESS RELEASE

Industry calls for EU guidelines on the application of proportionality to patents to avoid abusive litigation

Brussels, 5 December 2018 – On the first anniversary of the release of the EU IP Package, 34 companies and associations from various sectors called on the European Commission to support the application of the proportionality principle to patent enforcement through a new set of guidelines. These innovators request that the guidelines contain a list of factors that courts in all Member States should consider in deciding what remedies to grant upon a finding of patent infringement.

While the EU IPR Enforcement Directive (IPRED) requires that remedies granted by courts must be equitable and proportionate, “these requirements are not effectively applied in practice in many Member States”, the group said in a [letter](#) to Commission Vice-President Ansip. “Upon a finding of patent infringement, courts generally grant 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 signatories of the letter are concerned that the issuance of an injunction without consideration of proportionality injects a lack of balance into the European patent system. “The leverage obtained from the threat of an injunction on a complex product can greatly exceed the value of a patent covering a minor feature incorporated into that product, especially when the patent owner’s true goal is to receive royalties, not to remove a product from the market. Such practices can discourage R&D investments, slow innovation in Europe, and are harmful to consumers”. As such, an immediate permanent injunction is a powerful weapon when wielded by Patent Assertion Entities (PAEs), and its availability is driving the growth of PAEs in Europe.

The Commission stated in its November 2017 IP Package that it would issue targeted guidelines on specific IPRED issues by 2019, building on its work with Member States’ experts and judges, with a view to improving the system of judicial enforcement in the EU.

###

Notes to editors:

List of signatories of the industry letter:

1. adidas AG
2. AirTies
3. Bayerische Motoren Werke AG
4. Bullitt Group Limited
5. Bury
6. Cisco
7. Computer & Communications Industry Association
8. Daimler
9. Dell
10. DENSO Corporation
11. Deutsche Telekom AG
12. European Semiconductor Industry Association
13. Honda Motor
14. HP Inc.
15. Iliad
16. Intel
17. Imec
18. IP2Innovate
19. Laird
20. Microsoft
21. Proximus
22. Robert Bosch GmbH
23. Sagemcom
24. Samsung Electronics Co., Ltd.
25. SAP
26. Sequans
27. Sierra Wireless
28. Spotify
29. Telit Communications S.p.A
30. u-blox AG
31. Visteon Corporation
32. Volkswagen AG
33. Vrijscrift Foundation
34. Wiko

For further information, please contact:

Patrick Oliver

Executive Director, IP2Innovate

Email: contact@ip2innovate.eu

Mobile: +32-477-597065