



Supporting
**Europe's
competitiveness
and innovation**
through a balanced patent system

IP2i Intellectual
Property
2 Innovate

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A balanced patent system is crucial for Europe's global competitiveness in critical technologies, attracting investment and fostering innovation to enhance productivity.

To support innovation, EU law, specifically the Intellectual Property Rights Enforcement Directive (IPRED), mandates that remedies for patent infringement be proportionate, however...



Injunctions are granted effectively automatically, without consideration of proportionality, in 99% of cases.¹



An unintentional infringement by a manufacturer of a patent that relates to a minor feature of a complex product can result in the entire product range being immediately removed from the market.



Due to the risk of automatic injunctions, companies often settle claims to avoid having their entire product range removed from the market, giving patent owners excessive leverage to demand settlements far surpassing the patented technology's value.²



The situation is even more egregious when the defendant is an SME and the recalled product provides their only source of revenue. SMEs are particularly vulnerable because they often do not have resources to defend themselves in court.

2

The system of automatic injunctions makes Europe attractive for PAEs

PAEs do not innovate and do not create and sell new products. They are financial vehicles that buy and assert patents against operating companies for the sole purpose of obtaining the highest possible payment. Sometimes they do so by abusing the imbalances in Europe's patent system, in particular the threat of injunctions which are granted effectively automatically in Europe.

PAEs play a significant role in patent litigation in the EU, particularly in the ICT sector involving complex, highly integrated products where companies are especially vulnerable to the threat of automatic injunctions.

20k

PAEs appear as current owners of almost 20K patent applications at the EPO³

80%

Eight of the top most active PAEs in the EU are based in the U.S.⁴

74%

ICT accounts for 74% of the patents asserted by PAEs in the EU⁴

30%

In the UPC, NPE-initiated infringement cases in the ICT sector account for almost 30% of the total number of infringement cases⁵

14%

14% of patent litigation in Germany is brought by PAEs³

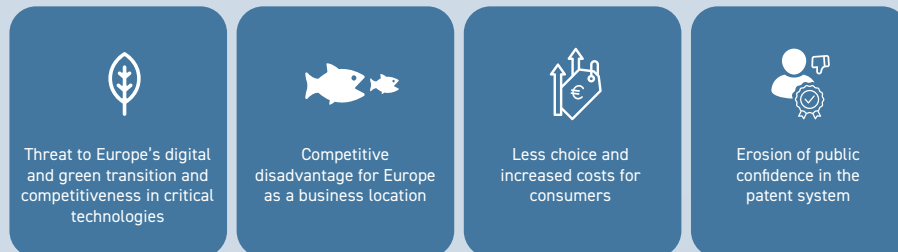
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Abuse of Europe's patent system damages European innovators and Europe's competitiveness

Damages to individual companies



Subsequent damages to European economy and society



4

EU IPR Enforcement Directive requires modernisation to be fit for purpose in the digital age

Now is the time, 20 years after its adoption, to **modernize the Intellectual Property Rights Enforcement Directive (IPRED)** to ensure it is fit for purpose in the digital age.



Targeted amendments to IPRED would **ensure that courts in the EU Member States and the newly established Unified Patent Court are required to apply proportionality effectively in determining remedies in patent litigation cases.** This would prevent abuse and ensure the patent system supports innovation and competitiveness.

Testimonials from our members



Hendrik Bourgeois
Vice President European
Government Affairs of Intel
Corporation



As a supplier of key technologies for future markets such as connected and autonomous driving, Industry 4.0 and artificial intelligence, we see first-hand how unconditional injunctive relief under patent law can hinder the market implementation of new technologies, slow down innovation and harm our customers and consumers.



Alexander Haertel
Head of Patent Law of
Deutsche Telekom



It is important to ensure that the interests of third parties are adequately protected and taken into account when applying the principle of proportionality in the context of patent enforcement. Our network infrastructure, which serves as the backbone of digitalisation, has faced challenges due to patent litigation for a number of years. The implications of imbalanced patent litigation extend beyond us as a network operator, as they also affect those who rely on the uninterrupted functioning of internet and telephony services, such as healthcare facilities, businesses, and government agencies.



Reinhold Diener
Vice President Intellectual
Property of BMW Group



Implementing safeguards in the EU patent system as to the application of proportionality is crucial to support competitiveness of companies that develop and manufacture innovative and highly complex products within the EU. Effectively applying a proportionality test in patent infringement proceedings is particularly important in this context.



Christof Wolpert
Vice-President Global
Legal Innovation of Adidas



We are selling consumer products which change on a seasonal calendar or are planned for specific sport events such as the Euro Cup or World Cup. That short selling window can be used by non-practicing entities, using the threat of an automatic injunction to extract high settlement fees from us.

About Us

IP2Innovate 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 represent in total over 40 companies.

Our mission

IP2Innovate's mission is to work with policymakers, the legal profession and judicial authorities to bring balance to Europe's patent legal system so that it supports innovation and economic growth to the benefit of all.

Contact us

For more information

visit www.ip2innovate.eu or contact us at contact@ip2innovate.eu

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References:

1. According to data provided by Darts-ip – Clarivate, between 2015 and 2020, courts in Europe handed out permanent injunctions automatically in over 99% of patent cases in which an infringement was found and a permanent injunction requested.
2. According to a brief by Copenhagen Economics - Economic implications of automatic injunctions in German patent litigation – in the Broadcom-Audi case the estimated settlement payment exceeds the value of the invention by more than ten thousand.
3. Non-Practicing Entities in Europe: an Empirical Analysis of Patent Acquisitions at the European Patent Office, November 2021
4. Clarivate report "2024 Non-Practicing Entity global litigation report - Analyzing NPE litigation behavior and outcomes from 2018-2023", May 2024
5. The European Unified Patent Court and Non-Practicing Entities: A Year of Early Evidence, July 2024