



2021/2007(INI)

22.6.2021

OPINION

of the Committee on the Internal Market and Consumer Protection

for the Committee on Legal Affairs

on an intellectual property action plan to support the EU's recovery and
resilience
(2021/2007(INI))

Rapporteur for opinion: Vlad-Marius Botoș

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SUGGESTIONS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

- A. whereas intellectual property (IP) registrations are constantly increasing, and the single market remains fragmented as a result of differences in national legislation; whereas there is a continuing need for parallel national validation procedures and litigation for European patents; whereas gaps remain, in particular in enforcement, which can hinder the development of companies, in particular micro, small and medium-sized enterprises (SMEs), limit consumers' access to innovative and safe products, and prevent social challenges from being addressed through innovation;
- B. whereas 45 % of GDP comes from intellectual property rights (IPR)-intensive industries, which directly contribute to the creation of almost 30 % of all jobs, but only 9 % of all EU SMEs have registered IP rights; whereas high costs, administrative burdens and the lack of information on IP registration and management hinder micro and SMEs from making full use of the opportunities offered by IP and data sharing;
- C. whereas there is a lack of information in some Member States about the benefits and intrinsic value of IPR; whereas IPR increases total company value, leading to a more resilient business and stronger position on the single market;
- D. whereas although IPR are well regulated in most Member States, there is still no harmonised enforcement of the IPR legal framework; whereas infringements, counterfeiting, piracy, hold-backs, and a lack of cross-border enforcement are jeopardising cultural diversity, as well as IPR and open source systems that support innovation; whereas counterfeit products are still commonly found in the single market, with most of them entering the EU through the digital market, causing financial losses of approximately EUR 60 billion per year;
- E. whereas IP registrations slightly increased in the first months of 2021 compared with the same period in 2020, though it is estimated that IP registration is still affected by the COVID-19 pandemic;
- F. whereas the innovative solutions that will ensure a sustainable and digital post-COVID economic recovery could be based on IPR, few micro and SMEs benefit from their IP when trying to get access to finance;
- G. whereas during the current COVID-19 pandemic the Rapid Alert system for dangerous products ('RAPEX') registered an alarming new all-time high number of alerts;
1. Stresses the importance of better cooperation between the European Union and the Member States on harmonising IP legislation and facilitating economic operators' access to IPR registration at EU level, as well as on effective harmonisation and improvement of enforcement of the legal framework protecting IP rights in the EU, where gaps remain; underlines that EU innovators should have access to fast, effective and affordable protection tools; recommends that gaps in current legislation be filled in

order to improve the functioning of the single market for IP and to enhance consumer protection;

2. Underlines that IPR protection is a crucial component of the European Union's internal market as IPR-intensive industries generate a significant proportion of EU gross domestic product and contribute to the creation of quality jobs; notes that the Court of Justice of the European Union is becoming increasingly active in IPR disputes, and that the Treaty on the Functioning of the European Union (TFEU) contains a still unused clause in Article 262 allowing for significantly strengthening the competences of the Union in the field of IPR;
3. Recalls that innovative capacity across the EU is strong, with particular excellence in some essential technologies for the future; stresses the importance of an IPR framework that supports this capacity and protects the investments made by innovators and companies in new technologies or approaches;
4. Notes that the EU lags behind in IPR filing statistics and in the concentration of filings in computer technologies compared to other global competitors; underlines the risk of excessive and abusive patenting practices if the granting of patents is too permissive; recommends that the Commission takes steps to facilitate greater uptake of IPRs, including via the swift establishment of the Unified Patent Court (UPC);
5. Notes the Commission's guidance on the implementation of Article 17 of Directive (EU) 2019/790, which assists Member States in implementing the Directive in line with fundamental rights;
6. Recalls the Commission's 2014 Action Plan on IPR Enforcement and the subsequent industry initiatives; calls on the Commission to formulate a strategy based on past experience to tackle and minimise infringements, hold-backs and piracy, which continue to thrive and have proven to be even more dangerous during the COVID-19 pandemic, posing severe health, safety and security threats to consumers; welcomes the Commission's proposal for the digital services act package, which clarifies and upgrades the responsibilities of digital service providers, in particular online platforms;
7. Stresses the importance of ensuring the availability of critical IP in times of crisis, including via new harmonised licensing tools and a system to coordinate compulsory licensing in order to make the EU's internal market more resilient by tackling, among others, the lack of availability of specific products and by better protecting of consumers' interests by avoiding price increases;
8. Welcomes the fact that the Commission is evaluating the possibility of introducing a unified supplementary protection certificate (SPC) grant mechanism and/or creating a unitary SPC title, which would resolve current fragmented implementation of IPR across Member States;
9. Stresses the importance of urgently addressing the lack of harmonised IPR enforcement at the EU level; asks the Commission to evaluate whether new measures or guidelines that facilitate cross-border IPR enforcement could complement the IPR enforcement Directive, such as European harmonisation of legal obligations on procedures, procedural safeguards, transparency mechanisms to verify the accuracy and reliability

of digital tools etc.;

10. Underlines that a green, digital and sustainable recovery and an increased single market resilience must be based on the full use of intangible assets; highlights the importance of disseminating information about the benefits of IP and the Commission's support programmes for all economic operators; highlights the need for such information to be specifically targeted at SMEs active in knowledge-intensive sectors;
11. Stresses that owning IPR leads to stability and economic growth for companies, as studies show that these companies pay their employees up to 19 % higher salaries overall and tend to be more stable; calls on the Commission and the Member States to create a strategy to accelerate and support research and development (R&D) leading to the transformation of the R&D results into valuable economic enterprises through the registration and valorisation of IP at the European level, increasing the number of the micro and SMEs using IPR, thus creating a more resilient economy and single market;
12. Stresses the importance of IPR-intensive industries in the green and digital recovery and resilience strategies; calls on the Commission to strengthen the single market by cooperating with the Member States in finding a common approach to addressing infringements and minimising hold-backs, thereby avoiding the proliferation of court cases on European-registered patents;
13. Underlines that IPR and open source system are essential for a real digital and green economy and a fast and sustainable recovery; calls on the Commission to cooperate with industry and stakeholders to find solutions, including for a better differentiation between standard essential patents and other patents, and for a clearer approach on the obligations for licensing of intermediate and final products;
14. Urges the Commission to cooperate with the Member States to facilitate further access to financial support and credits based on intangible assets in order to encourage SMEs to register their IP and reap the full benefits, ensuring a faster and more sustainable economic recovery;
15. Underlines the importance of IPR in a resilient economy and a green recovery; urges the Commission and the Member States to extend the eligibility for European funds to all economic operators for the registration and valorisation of IP leading to an increase in the added value of the product through the integration of licenses;
16. Emphasises the potential of IPR for incentivising research and innovation in the EU;
17. Calls on the Commission and Member States to make collective efforts to ensure that implementation of the Action Plan will result in far-reaching and effective reforms and implementation of the IP Regulation, with the ultimate aim of ensuring competitiveness and innovation, as well as safe and trustworthy products for consumers in the single market;
18. Notes that not all companies wish to register rights, depending on their strategy, and so support and advice offered should take account of all valid IP strategies in order to ensure the most effective use of a company's IPRs; considers that where registration is the preferred option, micro and SMEs should be supported through simple registration

procedures and low administrative fees;

19. Highlights that different industries might require different approaches, and warns that litigation and threats thereof could be a burden on the patent system if abusive behaviour becomes widespread; calls, therefore, for increased transparency of patent ownership, including by raising awareness about the advantages of legal protection of computer programs in line with Directive 2009/24/EC, and for abuse of litigation to be limited;
20. Stresses the importance of establishing a European unitary patent system which covers all Member States and therefore considerably simplifies patenting in the EU, boosts transparency and facilitates affordable licensing; calls on the Member States to renew the impetus for the introduction of the unitary patent system and the establishment of the UPC;
21. Stresses that the initiative should effectively support and build on the EU's efforts to adopt robust AI regulation, in order to improve citizens' trust and address safety in issues linked to AI technologies, blockchain and the internet of things, specifically in the areas of healthcare, education, and green technology, by protecting consumers' rights and citizens' fundamental rights;
22. Reiterates that lowering barriers for access to data is essential for encouraging the development of new services, applying current exceptions on text and data mining (TDM) in Directive (EU) 2019/790 properly in line with the objectives of these exceptions, and supporting AI developers; believes that further guidance could be considered, if appropriate, for specific issues that may arise in the practical implementation of TDM exceptions;
23. Notes that the use of AI systems in the realms of creation, innovation and science, which are highly dependent on IPR, has grown spectacularly in recent years, and is expected to continue to do so in the years to come; notes, therefore, that new technologies offer a unique window of opportunity to support the sustainable recovery of the EU's economy and the resilience of the internal market while leaving no one and no region behind; underlines that the Commission must incentivise and reward green technologies and inventions;
24. Calls on the Commission to consider, on the basis of an impact assessment, whether to propose an efficient and transparent uniform mechanism for the protection of non-agricultural geographical indications (GIs) such as handicrafts, which are often an important part of local identity, attract tourism, retain unique skills and contribute to quality job creation, particularly in less developed regions; stresses that this would provide consumers with better and visible information about the authenticity of these products;
25. Welcomes the Action Plan's aim of boosting support for the EU's geographical indication system by protecting GIs for both agricultural and non-agricultural products in order to improve their competitiveness, enable producers to fully benefit from opportunities, and contribute to the economic, social and environmental sustainability of the single market;

26. Underlines that counterfeit products placed on the internal market and failures in market surveillance have negative implications and are detrimental to consumers and overall trust in the single market; calls, in this regard, for an updated impact assessment of the overall functioning of the Enforcement Directive (2004/48/EC); urges the Commission to effectively enforce the implementation of customs legislation and harmonise customs controls throughout the EU;
27. Calls on the Commission to promote campaigns to combat the entry of all counterfeit products, with emphasis on the counterfeit goods on the market most harmful to consumers; underlines that for a well-functioning data economy, global enforcement cooperation as well the sharing of data are necessary in order to guarantee that companies not headquartered in the EU also comply with European consumer protection rules;
28. Welcomes the Commission's intention to bolster the enforcement of IPRs at EU level by broadening the Commission's mandate and assigning this task to the European Anti-Fraud Office (OLAF), so that the latter not only prevents counterfeit goods from entering the single market, but can also act against illicit production of counterfeit goods within the EU; calls for currently existing enforcement silos to be bridged, and for substantially improvement in the capacity of law enforcement authorities to efficiently address security problems for consumers identified in the RAPEX system alerts;
29. Reiterates the European Union's mission to act as a global standard-setter for IP and its important role in addressing IP infringements and unfair practices and in ensuring a balanced approach at both EU and global level; underlines the global nature of IPR development, and thus in particular the need for trade-related support for European companies while ensuring a high level of consumer protection; stresses that international competitiveness and attractiveness is rooted in a strong and resilient internal market where there is IPR protection and enforcement.

INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

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| Date adopted | 21.6.2021 |
| Result of final vote | +: 32 -: 8 0: 4 |
| Members present for the final vote | Andrus Ansip, Pablo Arias Echeverría, Alessandra Basso, Brando Benifei, Hynek Blaško, Biljana Borzan, Vlad-Marius Botoș, Markus Buchheit, Andrea Caroppo, Anna Cavazzini, Dita Charanzová, Deirdre Clune, David Cormand, Carlo Fidanza, Evelyne Gebhardt, Sandro Gozi, Maria Grapini, Svenja Hahn, Virginie Joron, Eugen Jurzyca, Marcel Kolaja, Andrey Kovatchev, Jean-Lin Lacapelle, Maria-Manuel Leitão-Marques, Morten Løkkegaard, Antonius Manders, Beata Mazurek, Leszek Miller, Anne-Sophie Pelletier, Miroslav Radačovský, Christel Schaldemose, Andreas Schwab, Ivan Štefanec, Róza Thun und Hohenstein, Tom Vandenkendelaere, Marion Walsmann, Marco Zullo |
| Substitutes present for the final vote | Clara Aguilera, Rasmus Andresen, Geert Bourgeois, Maria da Graça Carvalho, Salvatore De Meo, Claude Gruffat, Tsvetelina Penkova |

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

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|-----------|--|
| 32 | + |
| ID | Alessandra Basso, Markus Buchheit, Virginie Joron, Jean-Lin Lacapelle |
| PPE | Pablo Arias Echeverría, Andrea Caroppo, Maria da Graça Carvalho, Deirdre Clune, Salvatore De Meo, Andrey Kovatchev, Antonius Manders, Andreas Schwab, Ivan Štefanec, Róza Thun und Hohenstein, Tom Vandenkendelaere, Marion Walsmann |
| Renew | Andrus Ansip, Vlad-Marius Botoș, Dita Charanzová, Sandro Gozi, Svenja Hahn, Morten Løkkegaard, Marco Zullo |
| S&D | Clara Aguilera, Brando Benifei, Biljana Borzan, Evelyne Gebhardt, Maria Grapini, Maria-Manuel Leitão-Marques, Leszek Miller, Tsvetelina Penkova, Christel Schaldemose |

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|-----------|---|
| 8 | - |
| ID | Hynek Blaško |
| NI | Miroslav Radačovský |
| The Left | Anne-Sophie Pelletier |
| Verts/ALE | Rasmus Andresen, Anna Cavazzini, David Cormand, Claude Gruffat, Marcel Kolaja |

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| 4 | 0 |
| ECR | Geert Bourgeois, Carlo Fidanza, Eugen Jurzyca, Beata Mazurek |

Key to symbols:

+ : in favour

- : against

0 : abstention