European Parliament
2019-2024

TEXTS ADOPTED

P9_TA(2021)0453

An intellectual property action plan to support the EU's recovery and resilience

European Parliament resolution of 11 November 2021 on an intellectual property action plan to support the EU's recovery and resilience (2021/2007(INI))

The European Parliament,

– having regard to the Commission communication of 25 November 2020 on a Pharmaceutical Strategy for Europe (COM(2020)0761),

– having regard to the Commission communication of 19 February 2020 on a European strategy for data (COM(2020)0066),

– having regard to the Commission communication of 25 November 2020 entitled 'Making the most of the EU's innovative potential – An intellectual property action plan to support the EU's recovery and resilience' (COM(2020)0760),

– having regard to the Charter of Fundamental Rights of the European Union (the "Charter"), in particular Article 17(2) thereof,

– having regard to the Agreement on a Unified Patent Court[1],

– having regard to the 1995 WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement),

– having regard to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications of the World Intellectual Property Organization (WIPO), which entered into force on 26 February 2020[2],

– having regard to Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility[3],

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1 OJ C 175, 20.6.2013, p. 1.
2 OJ L 271, 24.10.2019.
3 OJ L 57, 18.2.2021, p. 17.

– having regard to Regulation (EU) 2019/933 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EC) No 469/2009 concerning the supplementary protection certificate for medicinal products[1],

– having regard to Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC[2],

– having regard to Directive 2004/27/EC of the European Parliament and of the Council of 31 March 2004 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use[3],

– having regard to Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights[4],

– having regard to Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs[5],

– having regard to Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs[6],

– having regard to the Commission Pharmaceutical Sector Inquiry Report of 2009,

– having regard to joint EPO-EUIPO firm-level analysis report on intellectual property rights and firm performance in the European Union of February 2021,

– having regard to the Commission's evaluation of EU legislation on design protection,

– having regard to the Council conclusions setting the EU's priorities for the fight against serious and organised crime for EMPACT 2022-2025,

– having regard to the in-depth analysis commissioned by the European Parliament entitled 'Standard Essential Patents and the Internet of Things' of January 2019,

– having regard to its resolution of 9 June 2015 on 'Towards a renewed consensus on the enforcement of Intellectual Property Rights: An EU Action Plan'[7],

– having regard to its resolution of 20 October 2020 on intellectual property rights for the development of artificial intelligence technologies[8],

– having regard to its resolution of 19 May 2021 with recommendations to the Commission on challenges of sports events organisers in the digital environment[9],

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1 OJ L 153, 11.6.2019, p. 1.
2 OJ L 130, 17.5.2019, p. 92.
3 OJ L 136, 30.4.2004, p. 34.
4 OJ L 157, 30.4.2004, p. 45.
5 OJ L 289, 28.10.1998, p. 28.
6 OJ L 3, 5.1.2002, p. 1.
7 OJ C 407, 4.11.2016, p. 25.
8 OJ C 404, 6.10.2021, p. 129.
9 Texts adopted, P9_TA(2021)0236.

– having regard to its resolution of 6 October 2015 on the possible extension of geographical indication protection of the European Union to non-agricultural products[1] ,

– having regard to its resolution of 10 July 2020 on the EU's public health strategy post-COVID-19[2] ,

– having regard to Rule 54 of its Rules of Procedure,

– having regard to the opinions of the Committee on Development, the Committee on the Internal Market and Consumer Protection, the Committee on Agriculture and Rural Development and the Committee on Culture and Education,

– having regard to the report of the Committee on Legal Affairs (A9-0284/2021),

A. whereas balanced protection and enforcement of intellectual property rights (IPR), are very important to the European economy as well as to the EU's recovery and resilience, in particular to the COVID-19 pandemic;

B. whereas the COVID-19 pandemic has shown the importance of IP protection policies since it illustrated the need for effective measures to address the shortage of vaccines against COVID-19, threatened livelihoods and led to an existential loss of revenue for workers in the cultural and creative sectors;

C. whereas investments in intangibles were significantly less affected by the 2008 economic crisis, thereby showing IP assets' potential for creating economic stability and growth as well as a positive correlation between IPR ownership and quality and stability of employment; whereas studies show that businesses using IPRs grow faster, are more resilient to economic downturns, increase company value and strengthen their position in the single market; whereas these facts also point to the importance of incentivising and helping SMEs protect and own their IPRs;

D. whereas IP registrations slightly increased in the first months of 2021 compared with the same period in 2020; whereas a sustainable and digital post-COVID economic recovery could be based on IPR; 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;

E. 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;

F. whereas knowledge-intensive industries are a source of growth and prosperity; whereas between 2012 and 2016 they generated almost 30 % of all jobs and almost 45 % of total economic activity (GDP) in the EU, as shown in the 2019 industry-level analysis report

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1 OJ C 349, 17.10.2017, p. 2.
2 OJ C 371, 15.9.2021, p. 102.

by the European Patent Office (EPO) and the EU Intellectual Property Office (EUIPO)[1]; whereas IPR-intensive industries account for 93 % of total EU exports of goods to the rest of the world;

G. whereas IP is a fundamental right according to Article 17 of the Charter;

H. whereas the development and progress of knowledge-based industries depends to a significant extent on the rules governing IPR, and in particular on ensuring effective protection through efficient legislation on patents, trademarks, designs, copyright and related rights, geographical indications and plant variety protection, as well as through appropriate and harmonised application of the rules on the protection of trade secrets;

I. whereas IP systems contribute to the development of new medicines and IP incentives are important for ensuring effective access to affordable medicines; whereas new medicines must comply with international human rights law, public international law and public health requirements;

J. whereas European innovators are front-runners in green technologies, holding a major proportion of green patents and robust IP portfolios in technologies such as climate change adaptation, carbon capture and storage, and water and waste treatment;

K. whereas there is a need to promote the valorisation and deployment of research and development in Europe, as exemplified by the fact that in the field of AI only a minority of patent applicants worldwide are European, even though a significant percentage of high-value publications on AI come from Europe;

General

1. Supports the Commission in pursuing the aims of its IP action plan of November 2020, as strong, balanced and robust IPR protection at the national, European and international level which allows return on investment is particularly important for the economic and social recovery from and long-term resilience to COVID-19 and other global crises so that the EU can respond to crises in an agile way and in line with the principles of Regulation (EU) 2021/241 establishing the Recovery and Resilience Facility[2] and ensures legal certainty and compliance with European legislation, as well as enables the creation of a digital and globally competitive sustainable economy in Europe where innovation also serves the purpose of contributing to the common good of society;

2. Acknowledges that IPR protection encourages creative, inventive and innovative activity, thus allowing the largest number of people to benefit from this activity; notes that this activity makes it possible for inventors, innovators and authors to obtain compensation for their creative endeavours; calls on the Commission to continue supporting European companies' ability to innovate on the basis of a comprehensive IP regime in order to maintain effective protection for their R&D investments, secure fair returns through licensing, continue developing open technology standards that support

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1 EPO-EUIPO, *IPR-intensive industries and economic performances in the EU: Industry-level analysis report*, third edition, September 2019.

2 OJ L 57, 18.2.2021, p. 17.

competition and choice and ensure the participation of EU industry in the development of key technologies at global level;

SMEs and IP-protection

3. Highlights that IPRs have many benefits for small and medium-sized enterprises (SMEs) and micro-enterprises; underlines that IPR-intensive industries offer better quality jobs with better working conditions and higher remuneration; notes that SMEs that own IPRs generate up to 68 % higher revenue per employee and pay wages that are 20 % higher than those in SMEs that do not; is therefore concerned that many SMEs have difficulties in determining their own IP strategy and managing their IPRs; welcomes, therefore, IP vouchers, the IP Scan and other Commission and EUIPO initiatives to support simple registration procedures and low administrative fees for micro-enterprises and SMEs and to help them make the most of their IP; asks the Commission, the European Patent Office (EPO) and the EUIPO to consider extending these initiatives to all kinds of IP assets and to identify further measures to promote the benefits of IPR registration for the development of SME activities;

4. Is convinced that support for SMEs, including financial and non-financial measures, is the right way to provide them with better knowledge and to facilitate their access to IPRs and that the Union's financial and legal instruments are of the utmost importance in this regard; calls on the Commission and the EUIPO, therefore, to continue implementing IP management support measures for SMEs and micro-enterprises during the economic recovery, including the provision of one-stop shop access to information and related services and advice about IP; stresses that this support will help to leverage and promote all national and regional initiatives of members of the European Union Intellectual Property Network (EUIPN);

5. Is concerned that even though intangibles are some of the most valuable assets, only a few European SMEs are aware of this and benefit from their IP when trying to obtain finance; welcomes, therefore, the announced European IP Information Centre as one of many measures that will ensure that Europe capitalises further on the value of the knowledge our companies constantly create, develop and share, and that they are equipped with the necessary tools and information or manage these assets more actively; stresses that utility models provide fast and low-cost protection for technical inventions and are very attractive for SMEs; encourages the Member States that are not yet offering this tool, therefore, to establish it and calls on the Commission to consider the possibility of introducing EU-level utility model protection, which is currently not available;

Unitary Patent package

6. Stresses that the unitary patent package (UPP), which includes the European patent with unitary effect (unitary patent) and the Unified Patent Court (UPC), aims at making patent protection more efficient, as well as making dispute settlement across Europe comprehensible, by avoiding parallel procedures in Member States, and less costly, by reducing legal costs, as well as more accessible and efficient, thereby enhancing legal certainty; asks the participating Member States which have not yet done so, therefore, to move forward on the ratification of the Protocol to the Agreement on a Unified Patent Court on provisional application (PPA), as soon as possible, or to declare by other

means that they are bound by the PPA in order to allow the rapid entry into operation of the UPP;

7. Stresses that the unitary patent is an additional option in parallel to national patents and encourages the Member States that are not yet participating in enhanced cooperation for the creation of unitary patent protection and/or have not yet acceded to the UPC Agreement, to continue the process that will lead to full participation; recalls that innovative SMEs benefit from a consistent European patent system, and underlines that the UPC Agreement and its Rules of Procedure represent a carefully balanced solution reflecting the Union's fundamental principles of proportionality, flexibility, fairness and equity; takes note of the fee reductions and the reimbursement of fees for SMEs in the framework of the UPC Rules of Procedure;

8. Welcomes the one-stop-shop alternative dispute resolution system to be established under Article 35 of the UPC Agreement, which does not interfere with current national systems, so that parties' right to justice is not undermined; asks the Member States to enable the quick roll-out of the patent arbitration and mediation centre, and calls on the Commission to assess whether the centre could, in the medium or long term, deal with all IP disputes; welcomes Member States' efforts to find appropriate solutions to deal with the effects deriving from Brexit;

Supplementary protection certificates

9. Stresses that the supplementary protection certificate (SPC) regime within the EU, while of great practical relevance, suffers from fragmented implementation across the Member States; urges the Commission to issue guidelines for the Member States and to address this fragmentation, including by legislative proposals based on an exhaustive impact assessment;

10. Acknowledges that the UPP does not provide for a unitary SPC title and calls on the Member States to support the establishment of such a title as a logical extension of unitary patent protection;

11. Asks the Commission, in the absence of a unitary SPC title, to ensure coherence between the upcoming unitary patent and current SPC regimes within the EU by clarifying that national SPCs may be granted by national patent offices on the basis of a unitary patent;

12. Welcomes the fact that the Commission wants to assess the potential impact of a proposal for a unitary SPC; notes that the introduction of a unitary SPC title with suspensory condition depending on the formal decision at national level could even happen before the entry into force of the unitary patent, and suggests therefore that consideration be given to extending the EPO's mandate, so that examination of SPC applications could be carried out on the basis of unified rules;

13. Points out that inefficiencies in SPC granting procedures hamper innovators and producers to the detriment of equitable patient access to treatments and that a level playing field for makers of generics and biosimilars in the Union is essential; highlights, therefore, that abuses of divisional patent applications and patent linkage have to be effectively addressed; recalls that innovation should meet the most urgent needs of society and that timely supplies of medicines, including generics and biosimilars, should

be promoted in this context, as well as affordability and swift availability; stresses that a possible revision of the so-called Bolar exemption, which allows trials on patented products to be conducted to support generic and biosimilar marketing authorisation applications without being regarded as infringements of patent rights or SPCs for medicinal products, as well as effective and immediate market entry after the expiration of patent rights and SPCs, can only take place after a comprehensive impact assessment;

14. Underlines the important role played by public investments in R&D, and calls on the Commission and the Member States to ensure that the results of publicly financed R&D in the pharmaceutical sector are transparent, so that patenting and licensing conditions guarantee a public health return on public investments;

Standard essential patents

15. Acknowledges that information on the existence, scope and relevance of standard essential patents (SEPs) is important for fair licensing negotiations allowing the potential user of standards to identify the scale of their exposure to SEPs and possible licensors; notes that although good faith negotiations between willing parties occur in most cases, SEPs are often litigated; suggests that the Commission looks into possible incentives for negotiation that avoid litigation as it would avoid the accompanying dispute costs and reduce other related problems;

16. Stresses that many patent applications declared potentially essential in standards development organisations during the standard setting process may eventually not be essential to the standard as finally adopted or after the granting of the patent, and that an appropriate, truly independent and transparent scrutiny mechanism would enhance transparency and increase legal certainty; welcomes in this regard the pilot study for essentiality assessment of SEPs[1];

17. Asks the Commission to further investigate, together with the relevant actors, the requirements for an independent, neutral and transparent system of third party essentiality checks by identifying the demand for, assessing the impact of and defining the role that resources such as emerging technologies like AI and related technologies and/or technical expertise contributed by the EPO could play in that context, and to use the knowledge gained as input for the legislative initiative on SEP envisaged for the beginning of 2022 based on appropriate impact assessments;

18. Acknowledges the importance of a balanced licensing system for SEPs and insists on the importance of stable, efficient and fair rules for this; underlines that ‘fair, reasonable and non-discriminatory terms’ (FRAND) are vague legal terms that include legal uncertainty, and calls on the Commission to monitor industry developments and provide more clarity on various aspects of FRAND as well as case law and including through designating an observatory (competence centre) for this purpose; recalls Parliament’s previous call for the Commission to publish annual reports evidencing actual cases of non-compliance with FRAND and so-called patent ‘hold-ups’ and patent ‘hold-outs’;

19. Emphasises the importance of increasing the transparency of Standards Development Organisation (SDO) databases and calls on SDOs to update their declaration system and

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1 European Commission Joint Research Centre, *Pilot study for Essentiality Assessment of Standard Essential Patents,* 2020.

databases; highlights in this context Article 9(1)(c) of Regulation (EU) No 1257/2012[1] which provides that the EPO has the task of receiving and registering licensing commitments undertaken by the proprietor of a unitary patent in international standardisation bodies; calls on the Commission to continue observing the conduct of third country companies in international standardisation bodies which, together with recent decisions by foreign courts, places European companies at a significant disadvantage by undermining the competitiveness of the European market;

20. Notes the importance of transparency and the need to proactively provide necessary information in advance when licensing standard essential patents on FRAND terms in a way that will ensure a fair outcome of good faith negotiations between parties; highlights that the question of whether a SEP holder may choose the level of licensing in a supply chain or whether any company in the value chain must have access to a licence is not clarified yet, and therefore asks the Commission to cooperate with the relevant stakeholders in order to find an approach to this issue and to address it;

21. Highlights the value of existing industry-led voluntary initiatives to facilitate SEP licensing for the internet of things, such as licensing pools, which bring together the vast majority of European and international cellular technology developers;

Geographical indications

22. Recalls that around 3 300 products are protected by the EU as geographical indications (GIs) and that the yearly value of all these products has increased to over EUR 75 billion, and therefore welcomes the initiatives and actions to strengthen, modernise, streamline and better enforce the system of GIs for agricultural products, food, wines and spirits in order to make it more precise and effective, since they contribute to creating and protecting quality jobs, to the promotion of social, environmental and economic sustainability in rural areas, and to fostering European cultural diversity;

23. Considers that the issue of overburdening producers with administration in connection with the registration, amendment and management of GIs and traditional specialities guaranteed (TSG) product specifications should be at the heart of future discussions; recalls that the procedures for amending the specifications for GIs have been simplified and streamlined for wine and agri-food products as part of the review of the common agricultural policy reform, and that this approach should be strengthened in the future;

24. Recalls that farm-saved seeds are estimated to account for over 80 % of farmers' total seed requirements in some African countries; calls for the EU to support IPRs regimes that enhance the development of locally adapted seed varieties and farm-saved seeds, in line with the provisions of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and Article 19 of the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas;

25. Considers it essential to protect IPRs in a way that promotes research and innovation, in particular with the aim of introducing more resilient agricultural varieties to cope with

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[1] Regulation (EU) No 1257/2012 of the European Parliament and of the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection (OJ L 361, 31.12.2012, p. 1).

climate change, achieve sustainable and agro-ecological farming models that are protective of natural resources and respectful of the potential of non-protected reproductive and heterogeneous material in the organic sector; stresses that protection of plant variety rights is essential and requires a strong and enforceable protection system in the EU and highlights therefore the important role of the Community plant variety rights systems and the International Union for the Protection of New Varieties of Plants; points out that IPRs must also contribute to food security and the resilience and competitiveness of the EU agri-food model;

26. Stresses that further efforts should be made to increase transparency on the status and patentability of biological material; points out that breeders should be provided with adequate access to information on the biological material they will use in the plant breeding process; stresses that the Commission should implement new methods for effective consultation and exchange of information; opposes any patenting of live animals;

27. Believes that the recognition of GIs for non-agricultural products is relevant to the priorities of EU programmes being developed, including those of the industrial strategy, through the development of short supply chains, as well as the Green Deal by fostering locally-made products with greater traceability and transparency on the origin of the product and manufacturing processes used;

28. Supports the Commission in its initiative to establish, on the basis of a thorough impact assessment, an efficient and transparent EU *sui generis* protection of geographical indications (GIs) for non-agricultural products, which identify a product as originating in the territory of a Member State or a region or locality in that territory, where a given quality, reputation or other characteristic of the product is essentially attributable to its geographical origin, in order to align with, inter alia, the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications, which the EU has signed and which includes the possibility of protecting GIs for both agricultural and non-agricultural products; expects the Commission to propose legislation on this as soon as possible and by the end of 2021 at the latest;

29. Emphasises that the introduction of an EU *sui generis* protection system of GIs for non-agricultural products should aim to bring benefits to consumers, by facilitating knowledge of the authenticity product indications, have a positive economic impact on micro-enterprises and SMEs by encouraging competitiveness, and have a general impact on employment, development and tourism in rural and less developed areas, which could in particular help the EU's recovery after the COVID-19 crisis; believes that such *sui generis* protection of non-agricultural GIs would also facilitate access to third country markets through EU trade agreements; considers, however, that the system must envisage necessary safeguards, including effective and transparent application and opposition mechanisms;

30. Takes note of the fact that current EU trade mark protection does not allow producers to certify the link between quality and geographical origin, and that some Member States have already established national *sui generis* protection systems for GIs for non-agricultural products, owing to the lack of a harmonised protection system, leading to fragmentation on the market place and legal uncertainty, and also generating impacts to the detriment of producers; takes the view that harmonised protection at Union level would create the necessary legal certainty for all players along with guaranteed

prevention of IPR violations for manufactured and artisanal products so that the EU can better protect its interests at international level;

31. Suggests assigning the EUIPO the responsibility for establishing a register for non-agricultural GIs in order to ensure their uniform examination and protection throughout the Union;

Revision of the EU legislation on design protection

32. Stresses that the current design protection system at EU level was established 20 years ago and should be revised; welcomes therefore the Commission's willingness to modernise Union legislation on design protection in order to better support the transition to the digital, sustainable and green economy; calls on the Commission on the one hand to update the registration procedure to allow for new forms of design, such as graphical user interfaces, virtual and animated designs, fonts and icons, and those relevant following new developments and technologies to be protected in an easy and less burdensome way, and on the other hand to further harmonise the application and invalidation procedures in the Member States;

33. Notes that design protection for parts used for the repair of complex products is only partially harmonised; points out that some Member States have already introduced a 'spare parts exception' or 'repair clause' into their legislation, allowing for component parts of complex products to be manufactured and sold without infringing IPRs; notes that this creates fragmentation in the internal market and legal uncertainty; calls on the Commission, therefore, to include a 'repair clause' in its future proposal, which will contribute to support the transition towards a more sustainable and greener economy and avoid distortions of competition;

34. Believes that the EU design protection system should be aligned with the EU trademark system in order to allow for design holders to prevent design infringing goods to enter into the EU's customs territory, since rights attached to trademarks are enforceable against infringing goods transiting though the EU, while those attached to design are not; calls on the Commission to close this gap in the revision of the design legislation and make it possible for brand owners to put a stop to design counterfeits transiting through the EU;

35. Is convinced that design protection should be offered in a uniform way throughout the single market and suggests that the Commission thinks about aligning the Design Directive and the Community Design Regulation with a view to creating a greater legal certainty;

Fighting IPR infringements

36. Points out that counterfeit goods, such as, for example, counterfeit medicines or fake personal protective equipment or masks in the context of health crisis like the COVID-19 pandemic pose serious threats to the health and safety of EU citizens and can cause serious harm to public health; argues that although market surveillance activities aim to protect general public interests, while counterfeit products relate to the protection of private IPRs, there is a close relation between counterfeit products and risks to health and safety of consumers;

37. Highlights that in 2016 up to 6,8 % of EU imports, or a value of EUR 121 billion, were fake goods, and that their availability on the single market caused direct sales losses worth EUR 50 billion and approximately 416 000 direct job losses for the period 2013-2017[1]; points out that IPR infringement entails a low level of risk in terms of both the likelihood of detection and the sanction if detected; urges the Member States, together with the Commission, customs authorities, the EU Agency for Law Enforcement Cooperation (Europol), Interpol, and law enforcement authorities to coordinate strategies and to develop effective and dissuasive sanctions particularly in order to limit the amount of hazardous products made available to the public and to fight counterfeiting and piracy especially when it is connected to organised crime;

38. Regrets the significant use of the internet for the distribution of counterfeit products, infringing content and IPR-infringing services, with significant adverse effects for EU manufacturing industry as well as for the creative, cultural and sport sectors; welcomes the Commission proposal for a Digital Services Act; highlights the fact that the 'know your business customer' principle and the trusted flaggers system, would contribute enormously to the fight against counterfeiting and that AI and blockchain could play an important role in tackling counterfeit and pirated goods available online as well as contributing to enhanced enforcement of IPR in the whole supply chain; supports, therefore, the use of new technologies to combat IP infringements and welcomes evidence-based publications produced by the EUIPO Observatory in this respect;

39. Recognises the high potential of blockchain technologies for the registration and protection of IPRs; stresses that blockchain systems can help secure the supply chain through traceability, ensuring safety and securing every step against the dangers of counterfeiting at each level of the supply chain; notes, in particular with regard to the registration of IPRs, the need for intellectual property offices (IPOs) to adopt technical standards for their blockchain solutions in order to allow interoperability; underlines that AI and related technologies used for the registration procedure for granting IPRs cannot be a substitute for human review carried out on a case-by-case basis in order to ensure the quality and fairness of decisions;

40. Points out the link between IP crime and organised and serious international crime; welcomes, therefore, the Council's decision to put IP infringements back on the list of EU crime priorities in the framework of the European Multidisciplinary Platform Against Criminal Threats (EMPACT) for the forthcoming cycle 2022-2025, and asks the Council to maintain them on that list and to enhance cross-border cooperation between national authorities, the EUIPO, Europol, the EU Agency for Criminal Justice Cooperation (Eurojust) and the European Anti-Fraud Office (OLAF);

41. Welcomes the fact that the Commission intends to come up with a EU toolbox against counterfeiting in order to ameliorate cooperation between rights holders, public authorities, law enforcement authorities at national and EU level, and intermediaries by further clarifying roles and responsibilities, with the aim of facilitating effective information and data sharing between key actors, promoting the use of new tools and the tackling of counterfeiting activities; calls on the Commission to take concrete actions to monitor wilful infringement of IPRs, including where infringement is used in bad faith as a deliberate commercial strategy, and to push for greater control and cross-border cooperation between customs agencies as part of the fight against the import of

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1 EUIPO, *2020 Status Report on IPR infringement*: average annual figures, 2013-2017.

counterfeit products; calls the Commission to consider creating a similar EU toolbox to fight against other IPR infringements;

42. Stresses that long-term education on IP in schools, on counterfeiting and piracy would also be necessary in order to change the willingness to consume IPR-infringing goods and services; calls on the Member States, therefore, to cooperate with EUIPO in order to launch awareness campaigns, including in the field of 3D printing; recalls that 3D printing technology may raise some specific legal concerns regarding all areas of IP law, such as copyright, patents, designs, three-dimensional trademarks and geographical indications;

43. Calls on the Commission to continue protecting IPRs and promoting enforcement in non-EU countries, including through an increase in funding for targeted EU technical cooperation programmes and capacity building, such as the three ongoing IP Key cooperation programmes with China, South-East Asia and Latin America and the joint partnership with the African continent to promote better generation and management of IP, and by supporting IP regimes that enhance local agricultural development; encourages, in this context, the Commission, on the basis of the EU's experience, to assist policymakers and enforcement authorities and provide them with knowledge and guidelines for improving their capacity to tackle IPR infringements, and to promote feasible solutions, which could significantly reduce costs and simplify the procedures for obtaining, maintaining and enforcing the protection of IPRs, as well as to provide information to rights holders about the changing infringement landscape and the supply of counterfeit goods;

New challenges for IP policy-making

44. Highlights that IP protection related to AI technologies is important and should be duly considered, and that even though current rules on the protection of computer-implemented inventions by patents may cover AI technologies, there is a need for clear criteria for the protection of inventions generated with the assistance of AI technologies; asks the Commission, therefore, in cooperation with the EPO and EUIPO, to provide legal certainty on this subject and to follow the issue closely at international level in the WIPO;

45. Encourages the Member States to transpose the provisions of the Copyright Directive without delay and in a manner which reflects the agreement struck by the co-legislators to improve the protection it provides, and to allow exceptions such as access to online education and digitised cultural heritage; calls on the Commission to monitor buy-out contracts to ensure fair remuneration of creators based on copyright or authors' rights; underlines that the lack of harmonisation of rules on authorship and copyright ownership can lead to divergent national solutions for AI-assisted works;

46. Underlines that, despite a high level of harmonisation of IP rights across Europe, there is still a lack of efficient cross-border enforcement of these rights in the EU;

47. Welcomes the Commission's announcement that it will review the Database Directive in order to facilitate data access and use while safeguarding legitimate interests; points out that unnecessary barriers still hamper research and that robust data spaces have to be further developed in order to enable researchers to find scientific solutions, including

under exceptional time constraints; highlights in this respect the role of limitations and exceptions to exclusive rights;

48. Regrets the fact that the Commission's 2016 study on patent assertion entities (PAE) in Europe[1] did not provide a clear answer to the question of whether some PAE's business models, consisting of acquiring patents from third parties and seeking to generate revenue by asserting them against alleged infringers by misusing litigation asymmetries abuse loopholes in current legislation, and therefore constitute a problem that should be tackled; encourages the Commission to continue to monitor this issue and carry out a corresponding in-depth study;

49. Welcomes the efforts of all Member States to make sure that the courts take the principle of proportionality into consideration when dealing with injunction cases;

50. Notes that IPR protection is key to incentivising research and production of innovative products and processes, including new medicines, but is convinced that to fight global health emergencies, address the accessibility of certain medical products, and allow life-saving interventions in the public interest voluntary pooling of patents, compulsory licensing and flexibilities provided for in the WTO TRIPS Agreement are important; calls on the Commission, therefore, to analyse and explore possible options for ensuring effectiveness and better coordination of compulsory licensing in the EU, taking into account cases in which it has been used in the Union, the reasons for its use, the conditions under which it was granted, its economic consequences and whether it achieved the desired effect;

51. Stresses that a more equitable distribution of vaccines around the globe is essential for effectively combating the spread of COVID-19 and its mutations, and the need to support global access to COVID-19 vaccines; notes that the lack of access to affordable vaccines is still a major challenge in developing countries; supports; therefore; the Commission and the Member States in their efforts to push non-EU countries to lift current export bans and to step up the donation of vaccines; calls on the Commission and the Member States to further increase their efforts to support technology transfer and voluntary licensing of IPRs in order to enhance global access to affordable COVID-19-related medical products, to address global production constraints and supply shortages, and to thereby treat endemic or pandemic infectious diseases in the world population;

52. Welcomes the fact that least developed countries already enjoy a waiver, granted until 1 January 2033, on the implementation of TRIPS provisions on pharmaceuticals; urges the Commission, therefore, in cooperation with the WTO, to follow through on its promise to engage in active and constructive text-based negotiations at the WTO in order to work on incentivising and supporting the scaling up of vaccine production capacities in developing countries and incentivising voluntary and rapid pooling of IPR in times of crisis as well as voluntary licensing agreements, and to launch a dialogue on current obstacles to voluntary licensing and how to overcome them;

53. Suggests that an IP coordinator be established at European level in order to ensure a holistic and coordinated approach to EU IP policy and enhance cooperation between the

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[1] European Commission Joint Research Centre, *Patent Assertion Entities in Europe: Their impact on innovation and knowledge transfer in ICT markets*, 2016.

different national IP authorities, Commission Directorates-General and other bodies in charge of IPR, such as the EPO, EUIPO, WIPO and other relevant actors; the IP coordinator could further promote the fight against IPR infringements at the highest political level and take on other duties related to IPR if necessary;

54. Defends the idea that promotion of better IP management in the research and innovation community is needed in order to materialise Europe's excellent research into innovation that are beneficial to its citizens and businesses; stresses that, in this context, publicly funded IP must be used in a fair and effective manner, and that results achieved with EU funds should be used to improve the EU's economy for all;

55. Recalls that IPR-intensive industries generate the bulk of EU trade activities and that also protecting and enforcing IPRs in third countries is essential; welcomes the Commission's commitment to seek robust protection for IP in future free trade agreements; asks the Commission to call for IPRs enforcement to be addressed at the World Trade Organization (WTO) and WIPO;

56. Recalls that one of the main challenges for developing countries is to move up the global value chain through economic diversification, which requires fair and pro-development global trade rules;

57. Encourages developing countries to strengthen regional value chains and intra-regional trade and investments in health and health-related areas, in particular through collective R&D efforts in medical research and regional pooling of resources; notes with concern that, according to the Global Trade Alert, by 21 March 2020, 54 governments had introduced export curbs on key medical supplies since the beginning of that year; stresses that regional trade pacts should be used to prevent export bans on key products in times of global and regional shortages, as in the case of the ongoing pandemic crisis;

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58. Instructs its President to forward this resolution to the Council and the Commission.