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Subject: Council conclusions on intellectual property policy (18 June 2021)

Delegations will find in the annex the ‘Council conclusions on intellectual property policy’, as approved by the Council (Economic and Financial Affairs) at its meeting on 18 June 2021.

Council conclusions on intellectual property policy

THE COUNCIL OF THE EUROPEAN UNION:

1. RECALLING

- the Council conclusions of 10 November 2020 on intellectual property policy and the revision of the industrial design system in the Union¹;
- the Commission Communication of 25 November 2020 ‘An intellectual property action plan to support the EU’s recovery and resilience’², which identifies intellectual property (IP) as a key asset for the EU, while acknowledging that for its effectiveness, well-calibrated policies must be put in place for purposes of helping companies to capitalise on their inventions and creations, ensuring that these serve the economy and society as a whole;
- the conclusions of the special meeting of the European Council of 24 and 25 May 2021³, in particular its call for work to be stepped up to ensure global equitable access to COVID-19 vaccines and the EU's and the Member States' commitment to accelerating vaccine sharing to support countries in need and to helping to develop local manufacturing capacity, in line with the Rome Declaration of the Global Health Summit;
- the Council Conclusions of 23 April 2021 on ‘Team Europe’⁴ addressing the global aspects of the COVID-19 pandemic, which state that it is essential to ensure timely, fair and equitable global access to safe, affordable and effective vaccines, therapeutics and diagnostics against COVID-19. In this context, the Conclusions affirm that the EU and its Member States stand at the core of relevant multilateral efforts, in particular regarding the access to COVID-19 Tools Accelerator and its COVAX Facility;

¹ OJ C 379I, 10.11.2020, p. 1.

² 13354/20.

³ EUCO 5/21, paragraph 3.

⁴ 7894/21.

- the Commission Communication of 17 February 2021 ‘HERA Incubator: Anticipating together the threat of COVID-19 variants’⁵, in which it is considered that one of the fastest ways to increase vaccine production is to strengthen manufacturing and assembly/finishing capacities, which might involve voluntary sharing of know-how and IP in relation to vaccines, and their technologies, in order to reduce the time needed to transfer these technologies;
- the accession of the Union to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications (GIs), which contributed to the improvement and modernisation of GI protection systems at global level; and recalls that it stands ready to consider the introduction of a system for *sui generis* protection of non-agricultural products at EU level, on the basis of a thorough impact assessment of its potential costs and benefits, and building on stakeholder feedback to the Commission’s recent inception impact assessment and public consultation;
- the Council Conclusions of 21 September 2020⁶, which call for actions to allow SMEs to fully benefit from the opportunities of the Single Market, including by enabling growth investments through the facilitation of IP-driven investments for SMEs; those Conclusions also welcomed the Commission Communication of 10 March 2020 ‘Long term action plan for better implementation and enforcement of single market rules’⁷, which stressed the need to strengthen the enforcement of IP rights and of prohibitions or restrictions on the placing of counterfeit or illicit goods in the single market;

⁵ 6375/21.
⁶ 10698/20.
⁷ 6778/20.

Intellectual Property action plan

2. WELCOMES the Commission's Intellectual Property action plan, and the initiatives announced therein on better protection of IP, on promoting an effective use and deployment of IP, on easier access to and sharing of IP-protected assets, on fighting IPR infringements, and on fair play at global level;
3. URGES the Commission to prioritise the timely presentation of the corresponding legislative proposals, including a proposal as soon as possible on the revision and modernisation of EU legislation on industrial designs to make it more accessible, especially for SMEs; LOOKS FORWARD to progress on the non-legislative agenda announced in the action plan, including the upcoming EU Toolbox against counterfeiting and the work in the fields of Artificial Intelligence, data sharing and an improved 'copyright infrastructure';

Role of IP in helping address the COVID-19 pandemic

4. CONSCIOUS that the COVID-19 pandemic has had and continues to have serious consequences for the global economy and recognising that urgent measures were and are required to support R&D and increase vaccines production capacities in order for the EU to recover its global competitiveness and return to economic growth in the near future;
5. EMPHASISING that even in a time of crisis, innovation and creativity did not stop in the Union, and that the IP system has proven to be, and should remain, a driver for innovation, competitiveness, economic growth and sustainable development, as well as a key enabling framework for cooperation and transfer of knowledge and technology;
6. CONSIDERING that close cooperation among all relevant public and private actors relying, where needed, on voluntary solutions for the sharing of IP, know-how and data, is a promising way to address possible challenges and rapidly increase production capacities and supply worldwide, and ensure access to critical products for diagnosing, treating and preventing COVID-19, including vaccines;

7. CONSIDERING that the Union is engaging actively in a comprehensive dialogue in the context of the World Trade Organization (WTO) and other international fora to explore how effective and pragmatic approaches, such as patent pooling, licensing initiatives and knowledge/vaccine sharing platforms can best support affordable and equitable access to COVID-19 medicinal products, diagnostics, vaccines and treatments, in order to provide for a robust, rapid and universal response to the pandemic; CONSIDERING that the Union also stands ready to discuss other tools, including the flexibilities provided for in Articles 31 and 31bis of the TRIPS Agreement;
8. RECOGNISING that the pandemic has also affected the work of IP offices; CONSIDERING that the IP offices adapted to this challenge, notably by promoting online and paperless procedures, thus guaranteeing safety for users of the IP system and for the staff of IP offices, while at the same time ensuring smooth operation in the EU, in the service of innovation;
9. WELCOMES COVID-related support measures by the Commission that allow for a robust, strong and balanced IP system, built on a green and digital basis, which will contribute to a more sustainable economy;
10. LOOKS FORWARD to further deliberations on possible IP tools and options for better co-ordination to cope with cross-border crisis situations; ACKNOWLEDGES the readiness of the Commission to provide, in the context of the work of the Task Force on Industrial Scale-up of COVID-19 vaccines, support on any possible IP-related issues;
11. RECALLING that the EU is the main exporter of vaccines worldwide, with half of all production in the Union being shipped to the rest of the world, and is among the leading financial contributors to the COVAX facility, STRESSES the need for increased global support for the COVAX facility and CALLS ON all vaccine producing countries to allow exports and avoid any measures that disrupt supply chains, thereby actively contributing to global efforts to increase supply worldwide;

SMEs and their economic recovery

12. CONSCIOUS that the worsening epidemiological situation gave rise to the adoption of numerous restrictive measures to prevent and respond to the pandemic;
13. CONSIDERING it urgent to develop and implement new instruments to support SMEs in bearing their operating costs, including those related to the protection and management of their IP rights, in order to mitigate the negative impacts on their overall financial situation;
14. RECOGNISES the increased difficulties caused by the current crisis and the inevitable repercussions on the economic actors, in particular on SMEs, namely as concerns the definition of business strategies for strengthening their competitiveness and speeding up economic growth;
15. HIGHLIGHTS that the protection and valorisation of IP rights and trade secrets is an essential factor for SMEs in terms of competitiveness, innovation, value-generation and guarantee of sustainability;
16. RECOGNISES that research infrastructures create added value when used simultaneously for the purpose of research and technological applications, an area in which IP plays an important role concerning collaboration with companies, particularly SMEs, thereby unlocking the innovation potential to achieve the EU's broader strategic priorities;
17. SHARES the assessment of the IP action plan that a large proportion of SMEs and researchers do not yet take full advantage of the opportunities offered by IP protection and its valorisation, and therefore CALLS FOR further action to promote the efficient use and implementation of IP in SMEs;

18. WELCOMES, therefore, the launching and implementation of the SME Support Fund by the Commission and the European Union Intellectual Property Office (EUIPO), which provides funding for advice on the role of IP as part of the business strategy of SMEs, as well as for registration of trademarks and industrial designs, through the national, regional and EU level intellectual property systems; BELIEVES that it would be useful to extend this support to patents in the future;
19. ACKNOWLEDGES that the work of the EUIPO and the national and regional Intellectual Property Offices, within the framework of the European Union Intellectual Property Network (EUIPN), will be fundamental to the success of this new initiative, in particular in cooperation with general business support instruments, such as the Enterprise Europe Network, clusters initiatives and with other IP-related support networks, such as patent information centres;
20. INVITES the Commission to develop and strengthen cooperation with the EUIPN and the different IP-related support networks and service providers, to ensure coherence and complementarity of current and future IP support measures for SMEs in all EU Member States, so that all IP rights are covered, thereby fostering small businesses' competitiveness, innovation and access to foreign markets;

Green and digital technologies

21. CONSIDERING that a sustainable future, which is more promising for the next generation, requires effective and efficient science and business-based interactions between IP and innovation;
22. RECOGNISES the need to debate the importance of protecting innovative solutions in the area of green and digital technologies as a means of promoting economic growth and the sustainable development of modern societies;

23. ACKNOWLEDGES the essentiality of intellectual property rights as an incentive in the development and diffusion of sustainable and environmentally friendly technologies, following the 2019 conclusions of the UN Conference on Climate Change which have motivated countries and business organisations towards a more socially and environmentally responsible attitude, also leading to the use of intellectual property rights as a tool for creating collaborative technology sharing strategies;
24. EMPHASISING the importance of the green and digital areas for the economic recovery and development of companies, including SMEs, in particular by means of green and digital technologies and open innovation as a strategy, which are included in the IP action plan;
25. UNDERLINES that the EU needs to make the most of its excellent research and innovation performance to support the green and digital transition of the EU economy, including by making effective use of smart IP protection and management by efficient mechanisms for IP sharing and technology transfer;
26. CONSIDERS it urgent to ensure that IP remains an enabling factor for the digital and green transitions, recognising that this should be the focus of a resilient, prolific and sustainable EU;
27. CALLS ON the Commission and the Member States to maximise incentives to harness the potential for creativity and innovation in green and digital technologies across the EU;

IP Enforcement

28. WELCOMES the ongoing efforts of the public and private sectors to fight offline and online IP infringements and reverse the growing trends of this scourge, thereby advocating a clear need to intensify efforts and considering the major role that new technologies may play in achieving the objectives pursued in this area;

29. CONSIDERS that the fight against IP infringements must necessarily involve an effective application of the existing legal framework, and EMPHASISES the importance of appropriate capacity in law enforcement authorities in the fight against IP infringements;
30. To help ensure that more effective measures can be taken against IPR infringements, CONSIDERS it necessary to encourage reflections on the prevention of and fight against criminal violations of IP rights, in particular counterfeiting and piracy, and their connection with international economic and financial crime, due to the involvement of organised criminal groups, including on the possible need to conduct a stocktaking exercise on existing legal differences between the Member States' criminal law frameworks, on possible criminal law and prosecution gaps and on legal and practical obstacles to cross border cooperation within the EU;
31. WELCOMES the Commission's 'Report on the functioning of the Memorandum of Understanding on the sale of counterfeit goods on the Internet'⁸; TAKING NOTE that the signatories consider the Memorandum of Understanding a valuable instrument to exchange information and good practices, and ensure effective cooperation between right holders and online platforms. Since the volume of counterfeiting goods still remains unacceptably high on online marketplaces, TAKES THE VIEW that these efforts will be strongly reinforced by the Digital Services Act and the upcoming EU Toolbox against counterfeiting;
32. CONSIDERS it is imperative that the EU seeks to minimise the existing vulnerabilities, by assessing the need to modernise the existing legal framework, thereby ensuring the intelligent and strategic use of IP and the effective fight against IP infringements;
33. STRESSES the importance of including the fight against IP infringements, including counterfeiting and piracy, in the priorities of all relevant Union policies;

⁸ 10189/20.

Patents

34. REITERATES its appreciation of the valuable discussions in the Administrative Council of the European Patent Organisation, including in its Patent Law Committee, regarding the patentability of essentially biological processes for the production of plants or animals and of the products obtained by such processes, aimed at achieving a deepened understanding, on the basis of an evidence-based approach, of Directive 98/44/EC on the legal protection of biotechnological inventions and of the corresponding provisions of the European Patent Convention; WELCOMES the monitoring and reporting exercise initiated by the European Patent Office (EPO) regarding its patent granting practices pursuant to opinion G 3/19 of the EPO Enlarged Board of Appeal of 14 May 2020;
35. RECALLING that supplementary protection certificates (SPCs) aim to compensate innovators for the loss of effective patent protection resulting from the time needed for mandatory clinical trials and market authorisation procedures, thereby encouraging innovation in the Union and contributing to preventing these industries from moving away from the Union;
36. CONSIDERING that SPC protection is provided at national level, which may lead to different decisions within the EU and, consequently, to parallel legal proceedings, potentially causing inefficiency, legal uncertainty and lack of clarity and predictability in the EU;
37. RECOGNISES the importance of continuing to work towards a more coherent system and, in this context, exploring further and more harmonised solutions for overcoming any existing obstacles; WELCOMES the efforts established in the IP action plan to improve the SPC system.