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

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The Committee on Legal Affairs adopted the own-initiative report by Marion WALSMANN (EPP, DE) on an intellectual property action plan to support the EU’s recovery and resilience.

The report noted that 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.

Members welcomed the intellectual property action plan to support the EU’s recovery and resilience, dated 25 November 2020, in which the Commission makes provision for such an overall strategy in order to make better use of the EU’s innovative potential.

SMEs and intellectual property protection

Members highlighted that intellectual property rights have many benefits for small and medium-sized enterprises (SMEs) and micro-enterprises. It is noted 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. Members are therefore concerned that many SMEs have difficulties in determining their own IP strategy and managing their IPRs. In this regard, they welcome 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. The Commission, the European Patent Office (EPO) and the EUIPO are asked 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.

Unitary Patent package

The report stressed 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.

Members asked 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.

Supplementary protection certificates

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

Standard essential patents

Acknowledging the importance of a balanced licensing system for standard essential patents, Members insisted on the importance of stable, efficient and fair rules for this. It underlined that 'fair, reasonable and non-discriminatory terms' (FRAND) are vague legal terms that include legal uncertainty. The Commission is called on 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.

Geographical indications

Around 3 300 products are protected by the EU as geographical indications (GIs) and the yearly value of all these products has increased to over EUR 75 billion. Members welcomed 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.

The report called for an **EU-wide protection system for geographical indications for non-agricultural products**, in particular as provision has already been made for this at international level.

Fighting IPR infringements

The report pointed 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. Members also regretted 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. They welcomed the fact that the Commission intends to come up with a **EU toolbox** against counterfeiting in order to improve cooperation between rights holders, public authorities, law enforcement authorities at national and EU level.

New challenges for IP policy-making

The report highlighted that intellectual property protection related to AI technologies is important and should be duly considered. Although 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.