



This DEV position paper addresses the key elements of the part of the EU Commission's IP Action Plan Roadmap Ares (2020)3662148 Chapter A.

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## ABOUT DEV e.V. - German Inventors' Association

The DEV, the German Inventors' Association, supports and represents start-ups and young inventors by providing contacts and networking with experienced inventors and successful SMEs.

Inventors and innovators who are willing to found a start-up are usually young and short of funds. Often, they are young academics who want to bring new technology to market. With a typical annual income of 40,000 to 50,000 only little is left to cover operating costs and to get professional advice for tax and legal problems.

Existing government support programs are only a small help. Raising funds in the EU is difficult, since venture capital is not available at a low, preferential tax rates, compared to other countries. Some of our members have already emigrated for this reason, others have given up completely.

Intellectual property IP is often the only valuable asset for such start-ups. Our members are well aware of the benefits of protecting and using IP, for example to use IP rights as collateral for venture capital. However, the current IP system has deficiencies that present serious obstacles for our members to take advantage of IP to protect their inventions and innovations.

Our members thus call for a functioning and affordable IP system which is the basis for any economy based on intellectual gain.

## THE KEY POINTS

### Ad A. Problem that the initiative aims to tackle 1st block

#### **The current EU IP rules are inefficient**

The DEV agrees that the European Patent System is far too complicated. In our inventor's view, it is inefficient, takes too long and is not designed to filter out applications with no or little inventive merit. In the view of our inventors it is contrary to Articles 106(1) and 101 to 109 TFEU as it gives different protection for the same invention in the member states. Currently, patent protection is granted to those who can afford to use extensive formalities and the diverging jurisprudence in their favor and does not reward inventive performance per se.

This is important, because nowadays it is far too expensive to invalidate granted patents of questionable value - so SMEs and even bigger companies are blackmailed by threats from such packages, (e.g. CD standards), and pay licenses for no reason.

### **Comparison to other IP-Regions**

Our fellow inventors and SMEs in the US, China or India (to name just a few large countries) enjoy extensive fee reductions in official fees and investors in these inventions and start-ups also receive high fee reductions.

Just to cite one of the most inventive countries: THE USA followed this strategy:

*"Fill the capital gap by using tax policy, securities regulation, and pension law to increase the pool of individual investors who will consider investments in Entrepreneurial Growth Companies or to free up more of EGC company earnings for reinvestment." A Recommendation of the National Commission on Entrepreneurship, American Formula for Growth, Federal Policy & the Entrepreneurial Economy, 1958-1998, October 2002.*

The success of such legislation is evident in Silicon Valley or Seattle – to name but a few examples.

### **High total costs**

Even the costs for filing a European Patent Application (Search Fees, Filing Fees and Attorney fees,) often exceed the available money and can amount to around EUR 6000 and above. The help of a professional European Patent Attorney is necessary, given the hurdles and formalities raised by the EPO. The costs for prosecuting a European application and validating a granted European patent in the different countries (translation fees etc.) are high as well and the length of the examination proceedings long.

The projected costs for the unitary EU patent, which is still in the ratification process, also appear high for start-ups and SME's.

### **European Utility Model**

An affordable European Utility Model is strongly recommended to enable rapid protection of inventions.

Geographical indications (GI) protection is still too expensive and bureaucratic and the protection of GI is currently not available for non-agricultural products. In addition, it is necessary to adjust the IP framework so that the digital and green economy can fully benefit from innovation.

For example, more clarity is needed with regard to the protection of new designs, which should also have a certain peculiarity, which should be examined by the Office upon request. The same applies to the effects of 3D printing on intellectual property rights and the protection of inventions generated or implemented with artificial intelligence (AI).

### **Unified European Inventors' Rights, Author's Rights and Copyright protection system is urgently needed**

We believe that the current EP patent system, if its protection and enforcement is refocused on the basic idea of rewarding inventions, can deal with some problems. Some important adjustments - especially to AI - seem necessary in order not to prevent future inventions by insufficient protection and even to block them completely.

## Ad A. Problem that the initiative aims to tackle 2nd block 1st part

### **Many SMEs and research centers can hardly afford the current EU-IP System**

We would like to emphasize that most SMEs are familiar with IP protection and its benefits. But, especially in a recession, they cannot afford the costly European patent system and may be forced to leave their inventions unprotected. A change in industrial policy Article 173 TFEU would increase competitiveness. Actions in the sense of the American Formula for Growth mentioned above can provide inventive prosperity.

## Ad A. Problem that the initiative aims to tackle 2nd block 2nd part

### **The current EU-IP system is unsuitable for AI**

The current EU-IP system must be adapted to protect inventions and innovations based on AI. Utility models and Copyright or Author's Rights are unsuitable for the protection of AI inventions.

The EPO has developed criteria for granting patents on computer-implemented inventions which should be adapted to also cover AI based inventions. However, the criteria are complex and require professional advice from specialized patent experts that are expensive and difficult to find.

EU inventors must not be deprived of IP protection for AI-based inventions which will be the basis for prosperous future companies.

## Ad A. Problem that the initiative aims to tackle 3rd block

### **The current IP protection system is far too slow**

The current system of patent protection is far too slow and, unfortunately, there is no uniform system of supplemental protection in Europe –such as a European utility model that would provide protection during the lengthy examination and opposition procedures at the EPO (although some EU countries have introduced a national route).

Rapid protection is the basis for the subsequent exploitation of an invention – e.g. through the subsequent exchange of data with potential investors, licensees or potential buyers, if the inventor does not want the risky adventure of founding a firm.

## Ad A. Problem that the initiative aims to tackle 4th and 5th block

### **EU standards for secure labelling are needed**

We would like to stress that no right of protection prevents the existence of fakes. The main problem is the simple detection of fakes and the secure marking of original goods, so that it is possible to isolate and destroy fakes. The current system is rather unsuitable for testing modern secure markings (e.g. DNA markings or holograms). We therefore consider it extremely important that the EU sets standards for (affordable) secure marking and equips customs with techniques to apply them.

People should be trained as early and as well as possible in order to be more careful with technical information.

For every start-up, inventor or SME, training should be offered as cost-effective and regular as possible and compulsory.

### **Regulations should be much shorter**

Today, the EU is wasting energy and the time of inventive persons and SMEs by producing an over-rich bureaucracy. EU rules are written in a sophisticated and lengthy style, and an endless flood of norms and rules hinders and stifles any progress. For example, it is almost impossible to implement new materials for medical devices because their tests are too expensive (experts say that most of the tests requested are unnecessary or repeat tests available from other applications). We therefore believe that the rules should be much shorter ("simple language") – especially in view of the inventors with migration background.

We would like to stress that, for example, US forms and regulations very often have information about how long it will take to read or fill it out, and the US authorities are trying to keep the information focused and easy to understand.

Finally:

### **IP systems compete**

IP systems are also in competition. They are the instruments for the protection of valuables and should be adapted quickly if necessary and advisable. SPCs were introduced as a result of the competing patent systems of Japan and the USA, which granted SPCs much earlier. So, Germany had to help the German pharmaceutical industry to obtain a similar extension of protection. The law changed to give pharmaceuticals the same/similar monopoly that US Pharmaceuticals or Japan Pharmaceuticals enjoyed.

### **Much faster to the Final Instances for the establishment of legal certainty**

It is well known that states without effective protection of intellectual property or outdated IP laws have a serious disadvantage in industrial development. A jungle of diverging decisions by the various courts and boards of appeal of the EPO and EUIPO, and consequently years of legal uncertainty, cases should be referred to the Final Instances much easier and more quickly in order to obtain legal certainty as to what can be protected and how to protect them as quickly as possible.

Today, AI suffers from a lack of legal protection in the EU compared to competitors in the US or China.