

Commission report on implementation of enforcement directive

Introduction

The Federation represents IP intensive companies in the United Kingdom - a list of members is attached. Our member companies are extensively involved with IP in Europe and internationally. Not only do our companies own considerable numbers of IP rights, both in Europe and elsewhere, but they are affected by the activities and IP rights of competitors. They may be either plaintiffs or defendants in IP related court actions, here and elsewhere.

The consultation

The Commission held a [consultation](#) on the Commission Report on the enforcement of intellectual property rights from 11 January to 31 March 2011. A number of responses have been received to this, including one from the UK Government. Their response can be accessed on the IPO website at:

<http://www.ipo.gov.uk/pro-policy/policy-enforcement/policy-enforcement-civil.htm>

IP Federation comments

The IP Federation welcomes the UK Government's response and supports the points it makes. In this regard we would also make the following points:

1. The enforcement directive is not about counterfeiting and piracy; it is about IP enforcement generally. The Commission must beware of making changes to the Directive which attempt to deal with counterfeiting and piracy but which have economically undesirable consequences outside that context, for instance -
 - (a) increasing the practical value of invalid patents; and
 - (b) encouraging patent trolls.
2. The report acknowledges the challenges that have arisen in recent years with regard to the Internet and digital technologies. We support the Commission's view that the Directive was not designed with these challenges in mind.
3. The Commission has not yet been able to conduct a critical economic analysis of the impact of the Directive. Even so, any recommendations on how to proceed must not be hurried, and generalised proposals that do not apply to all circumstances must not be made.
4. The Report highlights a number of areas that it suggests require attention. We believe that any new work, especially legislative measures,

should be based on concrete evidence that current enforcement measures are not working.

5. In particular, the 2004 Directive refers only to civil enforcement. We are opposed to the creation of new criminal sanctions within the current EU framework: clear separation between measures on civil and criminal enforcement needs to remain, and any recommendations should limit themselves to the field of civil enforcement.
6. In relation to damages, we believe that anything that changes the current UK provisions would be wrong.

Conclusion

The members of the IP Federation trust that full consideration will be given to the highly pertinent remarks that the UK Government has made in its response to the Consultation.

IP Federation
21 April 2011

IP Federation members 2011

The IP Federation (formerly TMPDF), represents the views of UK industry in both IPR policy and practice matters within the EU, the UK and internationally. Its membership comprises the innovative and influential companies listed below. It is listed on the European Commission's register of interest representatives with identity no: 83549331760-12.

ARM Ltd
AstraZeneca plc
Babcock International Ltd
BAE Systems plc
BP p.l.c.
British Telecommunications plc
British-American Tobacco Co Ltd
BTG plc
Delphi Corp.
Dyson Technology Ltd
Eli Lilly & Co Ltd
ExxonMobil Chemical Europe Inc
Ford of Europe
Fujitsu Services Ltd
GE Healthcare
GKN plc
GlaxoSmithKline plc
Hewlett-Packard Ltd
IBM UK Ltd
Infineum UK Ltd
Merck Sharp & Dohme Ltd
Nokia UK Ltd
Nucletron Ltd
Pfizer Ltd
Philips Electronics UK Ltd
Pilkington Group Ltd
Procter & Gamble Ltd
QinetiQ Ltd
Rolls-Royce plc
Shell International Ltd
Smith & Nephew
Syngenta Ltd
The Linde Group
UCB Pharma plc
Unilever plc
Xerox Ltd