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DIRECTORATE-GENERAL FOR INTERNAL MARKET, INDUSTRY, ENTREPRENEURSHIP
AND SMES
Industrial Policy and Innovation
Intellectual Property
Head of Unit

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Mr Patrick Oliver
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Dear Mr. Oliver,

Thank you very much for your letter addressed to Ursula von der Leyen, President of the European Commission, Margrethe Vestager, Executive Vice-President for a Europe fit for the Digital Age, Thierry Breton, Commissioner for Internal Market, Mr Gwenole Cozigou, acting Director General of DG GROW and Ms Salla Saastamoinen, Director for Civil and Commercial Justice at DG JUST.

In your letter, you ask the Commission to publish guidelines that *'would support the homogenous and effective application of equity and proportionality in patent enforcement'*.

On 31.01.2020 we met you and some of your members to discuss this matter. As indicated in that meeting, we fully agree with you that an effective and balanced patent system is important to encourage European companies, including SMEs and start-ups, to invest in innovation and creativity.

The proportionality principle in patent enforcement is enshrined in the IPR enforcement directive¹. Furthermore, the Commission published in 2017 an IP package to further improve the application and enforcement of IPR, and to step up the fight against counterfeiting and piracy. It supports a balanced regime for injunctions and provides some guidance related to the application of the proportionality principle in the context of granting injunctions.

EU Member States are aware of the guidance provided. The on-going review of the German patent act is of great importance as many patent cases are litigated in Germany.

¹ [Directive 2004/48/EC](#)

We recommend you to submit your concerns to the on-going consultation process in Germany. We invite you to share your concerns with us as well.

As mentioned during our meeting, we continue to monitor developments and jurisprudence as regards the application of proportionality and we will consider further actions as needed and appropriate.

Thank you for the continued exchange with us, in meetings and other exchanges, and the valuable input you provided to our work. We invite you to share with us evidence on the European dimension of the issue, knowing how difficult this is to obtain, as you rightly explained in our recent meeting.

Yours sincerely,

