

## The European Union's Intellectual Property Action Plan

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### I/ Introduction

In the modern economy intellectual property (“IP”) and intangible assets are key to the success of businesses and the broader European economy. Industries that make intensive use of IP rights such as patents, trademarks, industrial designs and copyright generate 45% of GDP (EUR 6.6 trillion) in the European Union (“EU”) annually and account for 63 million jobs (29% of all jobs).<sup>1</sup> However, the legal framework for IP in the EU, unlike other major jurisdictions, is a patchwork of regulations, directives and international treaties with significant fragmentation in some areas. Fragmentation raises costs for businesses, and decreases international competitiveness. In an effort to improve harmonisation, the European Commission (“Commission”) will release an **IP Action Plan** in September 2020 which will set out the path forward on how to improve the IP framework in the EU.

### II/ Background

**A review of the IP framework in the EU has been on the cards for some years.** In the her [Mission Letter](#) to Commissioner Breton, President von der Leyen requests the Commissioner for Internal Market “to take a close look at our intellectual property regime to ensure that it is coherent, is fit for the digital age and supports our competitiveness”. The IP Action Plan fits within the broader strategic goals of the Commission’s [Industrial Strategy](#) announced in March 2020. On April 20, Thierry Breton spoke to Members of the Legal Affairs Committee in the European Parliament expressly noting his intent to reduce fragmentation in the European IP framework.

### III/ The IP Action Plan

The IP Action Plan itself will be a Communication from the Commission setting out their plan for future **legislative** and **non-legislative initiatives**. The Commission states in the [Roadmap](#) that the overall objective of the Action Plan “will be to ensure that the EU has in place well-calibrated and modern IP policies that contribute to the resilience and competitiveness of the EU’s economy and facilitate the digital and green transition, benefitting the EU society as a whole.” In particular, the Commission envisions five primary areas of focus, each entailing a different set of initiatives:

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<sup>1</sup> IPR-intensive industries and economic performance in the European Union, EPO (September 2019): [http://documents.epo.org/projects/babylon/eponet.nsf/0/9208BDA62793D113C125847A00500CAA/\\$File/IPR-intensive\\_industries\\_and\\_economic\\_performance\\_in\\_the\\_EU\\_2019\\_en.pdf](http://documents.epo.org/projects/babylon/eponet.nsf/0/9208BDA62793D113C125847A00500CAA/$File/IPR-intensive_industries_and_economic_performance_in_the_EU_2019_en.pdf)



- **Upgrade the System of IP Protection**
- **Promote a Better Uptake and Deployment of IP**
- **Promote Better Licensing and Sharing IP-Protected Assets**
- **Fight IP Theft**
- **Promote a Global Fair Play**

The review of the IP framework is comprehensive, with a view towards strengthening many areas such as patents, copyright and designs, while expanding the scope of IP protections in areas such as artificial intelligence, data, and geographical indications for non-agricultural products. For those businesses in sectors such as pharmaceuticals, technology, agriculture and the creative industries, the IP Action Plan should be a top priority. Specifically, the Commission will upgrade the system of IP protection with a number of key initiatives focusing on

- Enabling the **Unitary Patent** system to offer a “one-stop-shop” for patent protection and enforcement;
- Considering ways to make the **SPC system** less fragmented
- Assessing ways to modernise the EU legislation on **industrial designs**;
- Establishing a European approach to **AI and IP protection**
- Exploring ways to strengthen the protection system for **GIs for agricultural products**;
- Considering the introduction of an **EU protection system for non-agricultural**;
- Ensuring the **Copyright Directive** is implemented promptly.

Below we identify three areas which different industry sectors may give special attention towards:

### **III.1/ A Unified Patent System**

**As the most fragmented area of the IP framework, the Unitary Patent is a key priority of the Commission** after almost a decade of stagnation.<sup>2</sup> A renewed push by the Commission is both welcome and necessary following the rescinding of the United Kingdom from the Unitary Patent system. Enforcement of patent rights remains largely the prerogative of national member state jurisdictions, due to the fact that the European Patent Convention is a distinct treaty from the EU. This dramatically increases the cost of patenting in the EU. The Unitary Patent system will remedy this by creating a harmonised system for EU wide (except Spain and Croatia) enforcement of patents rights that will complement the granting of European patents. A unitary patent will grant the holder a patent for the entire region of the EU, whereas the existing European patent system grants a bundle of patent rights applicable in each of the jurisdictions. This should rationalise a fragmented system that has been 40 years in the making.

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<sup>2</sup> [Regulation \(EU\) No 1257/2012](#) of the European Parliament and of the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection; Council [Regulation \(EU\) No 1260/2012](#) of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements.

### III.2/ EU Supplementary Protection Certificates

**The system for Supplementary Protection Certificates (SPCs) is also another area of fragmentation that the Commission is considering for improvement.** SPCs exist to allow patent holders in certain industries to extend the grant of a patent beyond 20 years, for up to a maximum of five years.<sup>3</sup> Pharmaceuticals, for example, must go through many years of testing and regulatory compliance before they can be made accessible to the market. Thus, an SPC is a specific grant that allows the patent holder to benefit from the full term of its patent grant and recoup its investments into research and develop.<sup>4</sup> The Commission identifies in the Roadmap that the current system is fragmented as protection is only available at national level. The Commission will therefore consider how an EU SPC system could be implemented which will link with the unitary patent system when it comes into effect.

### III.3/ Strengthening and Expanding Geographical Indications

**GIs are key for the EU's future trade and agricultural policies and are protected in the EU in a similar manner as trademarks.** As such, the EU has for decades now championed the system of geographical indications as a means to promote value for European producers and consumers. Currently there exist three types of GIs:<sup>5</sup>

- **Protected designations of origin (PDO)** for wines and agricultural food product names. To be recognised as a PDO, every part of the production, processing and preparation process must take place in a specific region;<sup>6</sup>
- **Protected geographical indication (PGI)** also for wines and agricultural and food product names. PGIs can be given *if at least one* of the stages of production, processing or preparation takes place in the region.
- **GIs for spirit drinks and aromatised wines** have to have at least one of the stages of distillation or preparation taking place in the region. However, raw ingredients do not need to come from the region.<sup>7</sup>

With the latest IP Action Plan, the goal is to further strengthen this system and to even expand it beyond foodstuffs so that other categories of traditional knowledge can be protected from unfair competition. The Commission has identified that the GI system is too cumbersome for users and in some instances, protection is unavailable. This puts European producers at a disadvantage to international competitors who can imitate and benefit from the reputation of the original products produced in the EU.

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<sup>3</sup> Art. 63(2)(b) European Patent Convention allows for the extension of a patent's term where the subject matter is a product or a process for manufacturing a product that is required by domestic law to undergo market authorisation before being commercialised

<sup>4</sup> The legal framework for SPCs is spread across three regulations: [Regulation 469/2009](#) concerning the supplementary protection certificate for medicinal products; [Regulation 1901/2006](#) on medicinal products for paediatric use; [Regulation 1610/96](#) concerning the creation of a supplementary protection certificate for plant protection products

<sup>5</sup> [Regulation \(EU\) No 1308/2013](#) of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products;

<sup>6</sup> [Regulation 1151/2012](#) of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs

<sup>7</sup> [Regulation \(EU\) No 251/2014](#) of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products.

#### **IV/ Commentary**

**The IP Action Plan will be the start of a process that entails a set of significant policy proposals that industry stakeholders would be remiss to ignore.** The Commission has an ambitious plan to significantly reduce fragmentation in the Internal Market and strengthen the European Union IP framework. The Commission will also be experimenting in certain areas, such as the expansion of the GI system to non-agricultural products. There will be opportunities and challenges for many in all of these policy discussions, and as always, a balance of interests will need to be struck.

**Companies looking to express their views on any and all of these upcoming initiatives should arrive early in the process.** Where an initiative will have broad application across sectors, the Commission will seek industry views from many areas of the economy and civil society. Stakeholders should therefore have a proactive strategic plan for engagement with officials to have their interests represented. A reactive plan will only cede ground to competitors to have their voices heard and to steer the policy debate. With a team of specialised IP experts, Lighthouse Europe is ideally situated to assist businesses and industry groups with an interest in these policy discussions and can assist with a better understanding of the legislative process, analysis of the policy debates, and assessment of the market-participants.

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