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Roadmap on design protection

The Confederation of Swedish Enterprise (Svenskt Näringsliv) welcomes the Commission's IP Action Plan Roadmap. It is an important initiative, as a strong IP framework is key to sustainable innovation.

The Confederation of Swedish Enterprise is Sweden's largest and most influential business federation representing 60 000 member companies. Among the member companies many are Small and Medium-Sized Enterprises (SMEs).

The Confederation of Swedish Enterprise shares the view that it is important to modernize and further harmonize the EU legislation on design protection. The creation of a design protection for the EU took several important steps, not the least in creating a protection with a design approach. This approach is the foundation of a protection that is still largely fit for purpose.

However, there are some concerns. In a world where design is becoming of greater and greater importance design protection is underused, not only by SMEs but by all types of actors. This underuse must be addressed in a clearer way.

As is pointed out, this may be caused by too complex procedures and a structure of fees that is not optimal. The strength of the protection, the likelihood that a registration will hold in court, is another important factor. This means that it is not enough to only improve accessibility and affordability of design protection in the EU. The certainty of the protection must also be improved. Here, digital solutions may be used.

The modernization of the trademark protection that was recently done may serve as a benchmark for modernizing also the design protection. This concerns both the changes when it comes to what can be covered by design protection and the procedures regarding registration.

The complexity of design protection is even greater for companies operating also outside the EU. There are still many differences between not only the legal foundations in different parts of the world but also the procedures for registration. It would therefore be beneficial if the EU took lead in harmonizing design protection internationally.

Another problem is however the lack of knowledge. EUIPO has done tremendous work in sharing knowledge on intellectual property. This work must continue. Unfortunately, the lack

of knowledge may lead to that many do not even know what to look for. New measures must be taken to reach those who do not realize that they lack knowledge.

When it comes to protection of spare parts harmonization is important. The aim should be that spare parts are protected under design protection. The protection of spare parts was one of the most difficult question in creating the design protection that we have today. Many things have however changed since then.

Today, all types of operations have to aim to be a part of a circular economy. One important part of the circular economy is the life length of different products. In order to improve the life length of their products, companies have to invest also in developing spare parts. Those investments strive for making repairs easy but at the same time preserve the safety of the product.

Competition today is global. Companies in the Member States have to compete on the ability to make their products fit for a circular economy with companies from for example the US, Japan, China, South Korea and Brazil. In all these countries, there is no equivalent to the limitations in protecting spare parts as we have in the EU. This is a clear disadvantage for companies here.

A harmonization of the protection of spare parts should therefore be to of a kind that creates an incentive for investing in developing spare parts. All other options create a disadvantage for Europe in the circular economy.

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