

Kluwer Patent Blog

De Boufflers Collective Position Paper - The waiving of intellectual property : a poor response to a real problem

Matthieu Dhenne (Ipsilon) · Thursday, May 20th, 2021

Readers of this blog know my interest in compulsory licensing as a balancing mechanism for patents[1]. For more than a year now, I have been repeating it wherever I can (here, in many peer reviews, French medias[2] and with French representatives[3]): in the face of the pandemic, patent holders must accept that their rights are limited, otherwise they will become the first targets of criticism with the arrival of treatments and vaccines (due to the phenomenal production needs).

Unfortunately, the legitimacy of patents is still fragile even nowadays and patent holders are ideal targets in time of crisis, probably also because they reject any flexibility in the use of their rights. However, a right is never absolute. Every right has its limits. If we insist too much on clumsily asserting an absolute right, we simply risk losing it. The stubborn assertion is answered by the negation.

All these philosophical discussions seem to be far behind us: what had to happen happened, India and South Africa introduced at the WTO a [proposal for an IP Waiver for the Covid-19 pandemic](#) and they are now followed notably by [France](#), but especially by the [United States](#).

Faced with this debate, the [Institut de Boufflers think tank](#) has initiated a [collective position](#) bringing together renowned lawyers and economists from all over the world to recall some of the realities of patent law and the flexibilities it offers.

This position will be sent to Emmanuel Macron, Katherine Tai, Ngozi Okonjo-Iweala and Ursula von der Leyen next week.

We hope that this collective initiative can make a useful contribution to this fundamental debate on innovation.

Signatories of the Position :

[Christoph ANN](#), [Nicolas Binctin](#), [Romain David Bourdon](#), [Jean-Michel Bruguière](#), [Patrice de Candé](#), [Anne-Catherine Chiariny](#), [Jean-Pierre Clavier](#), [Henry Delcamp](#), [Luc Desaunettes](#), [Matthieu Dhenne](#), [Mario Franzosi](#), [Thibault Gisclard](#),

Heinz Goddar, Sir Robin Jacob, Matthias Lamping, Jacques Larrieu, Alexandra Mendoza-Caminade, Didier Patry, Thierry Revet, Norman Siebrasse, Matthias Stalmár, Jérôme Tassi, Laurent Teyssedre, Lionel Vial, Fernand de Visscher, Charles de Haas, Michel Vivant.

[1] See [here](#) and [here](#) and [here](#) and [here](#) and [here](#) for instance.

[2] See [here](#) and [here](#) for instance.

[3] See the debate with MP Manon Aubry (at 33min20).

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