

Date: 31 March 2025

Subject: 4TU calls on the Dutch Government to integrate proportionality in patent law

Dear Minister Beljaarts,

On behalf of the 4TU.Federation, the federation of the four technical universities of the Netherlands (i.e. Delft University of Technology, Eindhoven University of Technology, Twente University and Wageningen University & Research) , we urge the Dutch government to incorporate the principle of proportionality into the Dutch Patent Act (Rijksoctrooiwet) as part of the upcoming legislative revision. This essential amendment will create a fair and balanced patent system, aligning the Netherlands with EU standards and fostering an environment that supports innovation by all.

This government has set as its ambition to position the Netherlands among the top five most competitive economies globally. The signatories believe that a balanced patent system is an important prerequisite to ensure the Netherlands' global competitiveness in critical technology areas, its attractiveness for companies to invest and do business in, and to increase innovation and the take up of new technologies necessary to bridge the gap in productivity levels when compared to other major economies. Unfortunately, experiences of the signatories, supported by data¹, indicate that the Dutch patent system currently lacks the necessary balance, undermining investment in innovation to the detriment of both the public and Dutch competitiveness.

Already 20 years ago, Article 3(2) of the EU's Directive on the Enforcement of Intellectual Property Rights (IPRED) requires that remedies for infringement be proportionate. In practice, this requires courts to consider the specific circumstances of each case before deciding on the remedy rather than automatically issuing injunctions. Up until today, this principle has not been transposed into Dutch patent legislation. As a result, data shows that Dutch courts do not undertake a full proportionality assessment and consistently issue injunctions effectively automatically upon a finding of patent infringement. Consequently, even an accidental infringement of a patent on a minor feature of a complex product like an automobile or a smartphone can result in the entire existing product range being immediately removed from the market.

Companies often settle claims to avoid an injunction, thereby giving patent owners excessive leverage to demand settlements that far surpass the patented technology's value. This disproportionate power not only stifles innovation but also creates a precarious environment for start-ups and scale-ups, whose growth is hindered by the constant threat of automatic injunctions. And for SMEs, this dynamic is particularly damaging, as a single product recall can jeopardize their primary revenue source, forcing settlements at levels far beyond the true value of the patent in question.

In light of the forthcoming revision of the Dutch Patent Act, we respectfully urge the Dutch government to codify proportionality within the patent enforcement framework. This step will help establish a fair, predictable patent environment that empowers businesses to bring new technologies to market, cutting red tape, strengthening trust in the Dutch patent system, and safeguarding the Netherlands' leading role in the European innovation ecosystem. By fostering an environment where innovation can thrive unimpeded by disproportionate enforcement, the Netherlands can set a robust example of balanced, forward-thinking patent governance for the rest of Europe.

Your action on this matter will be instrumental in fostering a patent system that supports growth and innovation in the Netherlands.

¹ An analysis of patent court rulings undertaken by Darts-ip for the period 1/1/2015 to 31/12/2020 shows permanent injunctions are granted effectively automatically, without any proportionality assessment, in over 99% of cases in which an infringement was found and injunction requested. Proportionality assessment was done only in 2 out of 628 cases (0.3%) in the EU countries.