



SEA Europe's Position Paper on the European Commission's new package for IPR Protection.

Industry's considerations for IPR protection in the Maritime Technology Sector

SEA Europe welcomes the European Commission's new package of measures to protect intellectual property rights, published on the 29th November 2017. The industry agrees on the need of reinforcing efforts against counterfeiting of products to encourage European companies, in particular SMEs and start-ups, to invest in innovation and creativity.

In Europe there are more than 300 shipyards and 22.000 maritime equipment suppliers which provide 900.000 highly skilled jobs. The industry is currently leading the global market providing the most advanced and innovative maritime technology, vessels and structures.

European maritime equipment manufacturing companies hold more than 50% of the global market shares, while European shipyards hold the most expensive orderbook in the world and are specialised in building the most intelligent, safe and efficient vessels in the market (passenger ships, research, fishing, offshore, naval, submarines, etc.). Actually, most of the IP of European companies lays on the equipment on board those vessels such as pipe laying, dredging, propulsion, navigation systems and other maritime installations that make the vessels efficient, clean and safe.

Over the years the industry has heavily invested in research, development and innovation generating accumulated knowledge assets of very high value. Indeed, maritime technology is one of the most research-intensive sectors in Europe, with more than 9% of its turnover invested in RDI.

The industry acknowledges that IP protection is key to maintain the leadership in high value-added market segments. However, the specificities of the maritime technology sector and its regulatory environment create specific challenges for European companies in applying traditional IPR protection tools.

Almost every vessel built in Europe is a unique prototype, which is designed and built according to the specific needs and desires of the customer. This is not the case for most of the products from other industries which tend to be manufactured in series. Therefore, the high amount of specific and innovative elements in each product requires special attention when it comes to IP protection.

Thanks to their innovative and specialised nature, European companies design and build certain products which are not produced anywhere else in the world. The fact that European producers are leading innovation and producing some of the most complex products in the market puts additional pressure on the protection of IPR and related rights. The ownership of specific technologies, designs and construction technics need to be protected from competing companies to maintain the technological leadership.

The complexity and variety of actors involved in the design, construction, operation, maintenance and repair of vessels and equipment requires special attention to protect trade secrets and IPR. In this regard, it is of outmost importance to ensure that through the acquisition of a vessel or a piece of equipment the buyer receives the necessary information for the operation and maintenance of the product but avoiding the transfer of sensitive information under IP protection from the shipbuilder or product supplier.

In 2016 the IMO adopted the **Ship Construction File Industry Standard (SCF IS)**. The SCF contains information related to the design and construction of the vessel which is needed to ensure the safety of the ship throughout its operational lifetime, including documents subject to high IP protection. In order to protect the IP, these sensitive documents will be stored at an onshore Archive Centre instead of being included in the onboard SFC.

Although the SCF IS was developed for the hull structure of bulk carriers and oil tankers, it could also be applied to other ship types and other mandatory requirements which may challenge IPR by facilitating unintended know-how transfer. Some additional fields of application have already been identified by the industry; e.g. "Guidelines for the approval of alternatives and equivalents" and IPR protection for sensitive EEDI and SEEMP (Ship Energy Efficiency Management Plan) verification documents

In the event that the SCF model would be extended to other products supplied by European companies, the industry would encourage the EC to ensure the implementation of a European Archive Centre safeguarding the valuable know-how and fostering the technological leadership of our industry.

Monitoring and controlling the use and installation of counterfeited maritime products onboard is not an easy task for obvious reasons. One barrier is of course the basic exemptions for ships in international traffic that exists in e.g. the Paris Convention making it difficult to enforce patent rights.

SEA Europe agrees with the intention of the EC to step up cooperation between EU customs authorities, assessing the implementation of the EU Customs Action Plan on IPR infringements for 2013-2017 and proposing targeted assistance to national customs authorities.

However, in the case of maritime products, the Commission should put in place additional tools to ensure the control of counterfeited products installed onboard vessels calling European ports. IPR protection is an underlying requirement for ship safety and environmental protection, as modern ships with increasing complexity cannot dispense with advanced technology. The significant industrial investments must be well protected against product piracy in order to maintain the competitive edge of innovative European manufacturers.

SEA Europe agrees with the observation of the EC regarding the existence of certain markets (geographical and product wise) where IPR infringements are more usual. Therefore, we encourage the Commission to reinforce cooperation programmes with third countries (China, South-East Asia, Latin America). The industry will certainly welcome the EC's Report on IPR enforcement in third countries and the EC's future watch-list of markets that are reported to engage in, or facilitate, substantial IPR infringement. In this regard, SEA Europe will remain available to facilitate information about the sector that could be useful for the watch-list. However, as a highly innovative business selling more than 50% the maritime supplies worldwide, the most important IP infringements challenging our companies are coming from developed countries. We would like to raise our strong

concern about this fact and call upon the policy makers to reinforce the protection of IP within the EU and in relation to other developed countries.

As in other sectors, digitalisation will bring additional challenges and opportunities that will require strong and clear IPR protection mechanisms and regulations. The so called *digital twin ship* is a virtual simulation of a physical vessel that can be used as a model for ship design, construction and to track the performance of vessels and onboard equipment through their life cycles. The twin digital ship will work on open source format enabling designers, equipment and system manufacturers, yards, ship owners, operators, research institutes and academia to work together to co-create and innovate together.

Therefore, SEA Europe welcomes the EC's decision to take further measures which can make the open source and access to digitalised information more secure for IP holders.

The EC's package addresses judicial enforcement, the potential of industry-led initiatives, the roles of public authorities and how to fight IP infringements within the EU and internationally. Within the maritime technology sector, most of the companies are SMEs which need to be ahead of innovation to continue in the market, and which find more difficulties in protecting their patents and embarking in legal processes when they consider that their IPR have been attacked.

In this regard, we welcome the decision of the EC to establish mediation and arbitration tools (ADR) to avoid when possible long and expensive legal processes which can themselves put a company outside of the market. However, it must be taken into consideration that most of the IPR infringements in the sector come from non-EU countries, and therefore, the EU should establish the mechanisms to ensure that these tools apply also at international level. This could be achieved through the negotiation of bilateral agreements (like EU-China dialogue in shipbuilding), and preferably at IMO level.

SEA Europe calls the EC to ensure an adequate legal protection and a predictable judicial framework across the EU to improve legal certainty and facilitating civil endorsement across the EU. The clarifications and guidance provided on how to apply the 2004 IPRED are welcomed. The industry would also welcome a clear guidance on how to apply all the different Directives affecting IPR protection.

Hereby, the industry invites the European Commission to discuss and share views regarding its work on the development of mediation and arbitration in patent cases and on other points reflected in this document.

On the other hand, SEA Europe would like to bring to the EC's attention several issues regarding patents of industrial standards and patent applications.

SEA Europe would like to call the European Patent Office and the European institutions involved in the IP protection to take the necessary steps, according to their respective responsibilities and fields of action, to avoid wrong SEP patents, avoiding SEP's which are content of legislation (laws).

SEA Europe would like to encourage the EPO to upload in their files the class rules established by the IMO to improve the patent monitoring and avoid patents over the industry standards established in the IMO rules.

SEA IPR has witnessed cases in which patents from Asian companies which described the state of the art and content of rules and regulations were granted. In order to avoid this kind of situation it is key improving the documentation departments of patent offices with regularly completed shipbuilding related state of the art information about standards, rules and regulations of IMO, classification societies, and other relevant sources.

Publication of the SEP's patent applications is also recommended in order to improve the transparency and certainty for the consumers and patent applicants. SEA Europe would like hereby to encourage the EPO to add the classification rules as a tool to be consulted and used when deciding about granting sector specific patents.

For further information:

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