

## **Cptech's Intervention at the EU Commissions Public Hearing on Future Patent Policy 12 July 2006**

### **Introduction**

The Consumer Project on Technology<sup>1</sup> (Cptech ) thanks the Commission for giving us the opportunity to intervene in these proceedings. Our comments draw on our fuller written response to the original questionnaire.

The primary aim with the Community patent is broadly to make patents cheaper to obtain and easier to enforce. This is fine if, and only if, the current patent system functions well. We do not believe that it does.

While there will remain a number of key questions about the mechanisms, institutions and accountability, the push for a Community Patent will be resisted by public interests groups unless the Commission deals with 4 prior issues:

**1) Opening up discussions and decisions on patent policy to more stakeholders and acknowledging other interests than rights holders.** Many of the initiatives taken by the Commission in this field are done in close cooperation with major rights holders, making the proposals one sided. It is often forgotten that citizens and consumers are key stakeholders in discussions about the future of the patent system. A poorly functioning patent system impedes not just innovation but also access.

Today is a good start.

**2) There must be a clear agreed statement of the purpose and objectives of policy in this area.** The Commission has made a start but it almost exclusively equates more protection with economic growth and innovation. Patents are only one tool and should only be used if the benefits outweigh the costs and are superior to alternative mechanisms.

**3) The Community should acknowledge the limited role for patents in the economy, and develop a better understanding of how to set appropriate limits.** There is a need for a more econometric approach to patent policy. We would like the policy to be developed on the basis of independent studies on the real problems of the patent system.

Specifically the costs patents represent to society should be taken into account. If patents were costless, they would not be controversial. But they do present costs to society, and in some cases, unacceptable costs. These include excessive prices for certain patentable inventions (such as Herceptin, the high priced and often rationed

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<sup>1</sup> Cptech is an NGO, with offices in London, Geneva and Washington DC. Currently much of our work concerns intellectual property policy and practices, focusing on access to knowledge, but some of it concerns different approaches to the production of knowledge goods, including for example new business models that support creative individuals and communities. Full details can be found on our website [www.cptech.org](http://www.cptech.org). We are also a member of the Transatlantic Consumer Dialogue ([www.tacd.org](http://www.tacd.org)) which regularly meets with US and EU officials to discuss IP policy.

cancer drug, and second line AIDS drugs in newer EC Member States), restrictions on the supply or inability to meet the demands of the market (such as Tamiflu), patent thickets that make it difficult to adopt standards for new technologies in the areas of computing and telecommunication devices, and many other areas.

A good patent system recognizes and addresses the issues of costs and benefits, by limiting the use of the patent system only to those areas where the benefits outweigh the costs, and secondly, by limiting the rights associated with a patent, in order to address well known problems.

CPTech believes there are several areas where the evidence suggests patents should not be used. These include: (1) business practices, (2) software, (3) certain areas in medicines where the patent system is an unneeded and unwelcome barrier to the use of innovations, such as recommended doses of medicines or surgical procedures on humans, to mention only a few areas.

The Commissions should also look at developing new approaches to ensure greater public benefits, whilst rewarding inventors. For example: Remunerative versus exclusive rights. Increasingly, experts are considering more formally the benefits in certain areas of treating patents as a right to remuneration, rather than a right to exclude.

**4) When the patent system is used, there must be a robust and effective mechanism to address abuses, and the public interest in more liberal use of the inventions.** This does not just involve competition powers. The limitations and exceptions to rights must include public authority to authorize both remunerative and non-remuneration non-voluntary uses of inventions, and to place constructive obligations on patent owners.

Only if the Commission deals with these issues, via legislation where necessary, can they then turn to implementing the policy objectives via the Community Patent or other means.

Delivered by Michelle Childs, Head of European Affairs.