

**European Commission Hearing on Future Patent Policy in Europe**  
**Brussels, 12 July 2006**

**Speech by Jonathan Zuck, President of the Association for Competitive Technology (ACT)**

Good morning Madame Chairman, members of the Commission, thank you for the opportunity to speak today on behalf of IT SMEs.

My name is Jonathan Zuck and I am the President of the Association for Competitive Technology, an IT industry trade association representing over 3,000 SMEs, about a third of whom are European. I would like also to express my appreciation for this consultation generally and the special attention given to SME interests in IP. I'm often fond of saying that there are a lot of people in Brussels willing to speak FOR SMEs and not that many people speaking TO them. The preliminary findings seem to me to be a fairly good representation of these interests so with my short time, I will try to take my responsibilities as an early speaker seriously: to make just a few points that hopefully survive the day.

First, it is always important to remember that not all SMEs are in the business of innovation. It is easy, for political and rhetorical purposes to speak of SMEs as if they represent a single interest and sometimes that is appropriate, but often, and especially in this case, it is not. For purposes of simplicity, the business of innovation can be defined as the business of risk. Those in the business of innovation set aside the notion of an hourly wage and instead bring something new to the market, and their success is based solely on the success of that new product. It is these SMEs who value the IP system the most because of the role it plays in access to capital, better behaved partners and the productization of innovations. To these SMEs, a smoothly functioning IP regime is critical.

As mentioned in the summary, what matters most to SMEs is accessibility and predictability. In a patent system, like any other European program, an emphasis must be placed on making the system accessible to SMEs. It needs to be accessible not only to those seeking to apply for or protect a patent but to those who would oppose those applications as well. Accessibility to IP holders is a function of simplification and cost containment. Accessibility to others comes in the form of points of entry into the system to oppose a particular patent and provide prior art and analysis of inventiveness.

Predictability for both groups of SMEs is primarily a function of the quality of patents coming out of the system. As an IP holder, if I've gone through the laborious process of getting a patent, I want

to know it with hold up under scrutiny down the road. The rest of the time, I want to know that my way will not be cluttered with obvious, uninventive patents and frivolous lawsuits.

So with the goals of accessibility and predictability in mind, I will make just a few recommendations. First, it is worthy to note that despite any political complexity, SMEs are nearly unanimous in their support of the notion of a community patent. We have done conference calls and focus groups around Europe in preparation for this consultation and, without fail, the most common request is for a simplified patent system for all of Europe. If I ask a typical entrepreneur about EPLA or the London Protocol he or she is likely to believe I'm talking about spy novels they have not yet read. Most SMEs are not involved in European politics (nor should we ask them to be) and they don't understand why, with all this talk about the importance of SMEs, something as simple as a single language, single patent for Europe isn't possible. Of course, part of my job is not only representing the interests of SMEs here but also to educate SMEs about the political environment and, in that context, there is support for EPLA and the London Agreement as interim measures on the way to a truly European Patent.

Of course, the EPLA is a form of litigation reform but to an SME, the best possible litigation "reform" is to avoid litigation. Costs for SMEs are often misunderstood. They don't mind paying high fees to the patent office, it's the lawyers who make the price of patents so high. Accordingly, there is a lot of support among the SMEs community for alternative means of dispute resolution including arbitration and mediation. The World Intellectual Property Organization has set a good example, as have many district courts in the United States through strong mediation programs. We look forward to working with the commission and the EPO to explore these opportunities to control litigation costs for SMEs. Another alternative to litigation is reexamination of a patent application, perhaps with new information, by the EPO. Now, we have nine months to oppose a patent application and present prior art. The problem is that SMEs are not monitoring the patent office for patents to oppose and really only notice a bad patent when they receive their first letter that they are in violation. It is worth exploring the notion of a second chance at opposition as an alternative to litigation surrounding patentability.

Finally, it is important not to leave the discussion of patents without some mention of patent quality. Fewer patents should be granted. However, it is the strong desire of SMEs that this reduction not be function of substantive categorical reform, excluding entire industries from patentability but rather a reexamination of the processes and incentives within the EPO to ensure that only patents which are indeed inventive are granted.

I would like to end with a story about a small European business in the retail space planning sector called Galleria. This business of 12 employees took time off from their hourly wage to bring a new

invention to their market. This invention revolutionized the way that large retailers design their floor plans. Because of their patents, their far larger competitors have not been able to simply expropriate their invention and customers, many in the United States, who normally do not do business with SMEs (much less European SMEs) are forced to take them seriously. This is an incredible success story and the question you have to ask yourself all day today is whether the recommendations you hear are likely to lead to more stories like this or less. Accessibility and predictability.

Thank you again for the opportunity to speak to you here today and I look forward to working with you on this critical issue.

*Jonathan Zuck is the President of the Association for Competitive Technology (ACT), an international education and advocacy group for the technology industry. Focusing on the interests of small and mid-size entrepreneurial technology companies, ACT advocates for a "Healthy Tech Environment" that promotes innovation, competition and investment. ACT has been active on issues such as intellectual property, international trade, e-commerce, privacy, internet policy and antitrust. ACT represents more than 3000 software developers, systems integrators, IT consulting and training firms, and e-businesses from around the world.*