

立法會
Legislative Council

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**Paper for the House Committee Meeting
of the Legislative Council
on 5 January 2001**

**Legal Service Division Report on
Intellectual Property (Miscellaneous Amendments) (No. 2) Bill 2000**

Object of the Bill

To make miscellaneous amendments to the Patents Ordinance (Cap. 514) and the Registered Designs Ordinance (Cap. 522).

LegCo Brief Reference

2. CIB/06/08/5 issued by the Commerce and Industry Bureau dated 5 December 2000.

Date of First Reading

3. 20 December 2000.

Comments

4. This Bill makes various technical amendments to two intellectual property Ordinances, i.e. the Patents Ordinance (Cap. 514) and the Registered Designs Ordinance (Cap. 522). The major amendment is to add a new definition of "official journal" to the two Ordinances and replace references to the "Gazette" by references to the "official journal" (Clauses 2(d), 10, 12, 17, 18, 22, 23 and 24). By this amendment, notification and advertisements for patents and designs can be made in an "official journal" and not just the "Gazette". This "official journal" need not be in a documentary form. It will therefore provide a legal basis for electronic publication of patents and designs. The new Trade Marks Ordinance (Cap. 559) has similar provisions and has already provided for the electronic publication of trade marks.

5. Clauses 3 and 4 remove the requirement that applicants must make a statement confirming that no claim to priority or non-prejudicial disclosure is made in the application. This will simplify the patent application procedure where there is no claim for priority or non-prejudicial disclosure.

6. Clause 7 adds a new provision to section 110 of the Patents Ordinance by providing that a right of priority arising as a result of the filing of a patent application, may be assigned or transmitted either together with the application or independently. This will give the proprietor of the patent greater flexibility to make economic use of his intellectual property right.

7. Other minor amendments include: reflecting the change in name of the Chinese Patent Office to State Intellectual Property Office (Clauses 8, 13, 14, 15 and 16); repealing 2 obsolete Rules made under the Registration of Patents Ordinance (Cap. 42) which has already been repealed (Clause 25) and clarifying that notices by the Registrar specifying the use of forms are not subsidiary legislation (Clauses 9 and 21).

Public Consultation

8. According to paragraph 27 of the LegCo Brief, the Administration has received general support for the proposed amendments in a public consultation exercise. In moving the Second Reading of the Bill, the Secretary for Commerce and Industry said that they had consulted the practitioners, the Law Society of Hong Kong and the Hong Kong Bar Association. They all supported the amendments.

Consultation with the LegCo Panel

9. The proposed amendments were discussed in the Panel on Trade and Industry (see LC Paper No. CB (1)151/00-01) on 13 November 2000.

Conclusion

10. We are seeking clarification from the Administration on certain legal and drafting aspects of the Bill and are awaiting their reply. A further report will be prepared when we receive the Administration's reply. Members may defer deciding on the setting up of a Bills Committee to a later date.

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