

立法會
Legislative Council

LC Paper No. CB(1)24/07-08
(These minutes have been seen
by the Administration)

Ref: CB1/BC/2/06

**Bills Committee on
Patents (Amendment) Bill 2007**

**Minutes of fifth meeting on
Wednesday, 19 September 2007, at 2:30 pm
in Conference Room B of the Legislative Council Building**

Members present : Hon SIN Chung-kai, SBS, JP (Chairman)
Hon Margaret NG
Hon LI Kwok-ying, MH, JP
Hon WONG Ting-kwong, BBS

Public Officers attending : Commerce and Economic Development Bureau

Mr Christopher K B WONG
Deputy Secretary for Commerce and Economic
Development (Commerce and Industry)

Ms Bonnie YAU
Principal Assistant Secretary for Commerce and Economic
Development (Commerce and Industry)

Mr T W MAK
Assistant Secretary for Commerce and Economic
Development (Commerce and Industry)

Intellectual Property Department

Ms Lavinia Y M CHANG
Assistant Director of Intellectual Property

Ms Margaret K W YU
Senior Solicitor

Department of Justice

Ms Amy W Y CHAN
Senior Government Counsel

Department of Health

Mr Anthony CHAN
Chief Pharmacist

Clerk in attendance : Miss Erin TSANG
Chief Council Secretary (1)3

Staff in attendance : Mr Timothy TSO
Assistant Legal Adviser 2

Mrs Mary TANG
Senior Council Secretary (1)2

Ms YUE Tin-po
Senior Council Secretary (1)5

Action

- I. Confirmation of minutes of meeting**
(LC Paper No. CB(1)2368/06-07 -- Minutes of meeting held on
19 July 2007)

The minutes of the meeting held on 19 July 2007 were confirmed.

- II. Papers issued since last meeting**
(LC Paper No. CB(1)2191/06-07(01) -- Administration's consolidated
response to submissions from Médecins Sans Frontières Hong
Kong, the Democratic Party, the Hong Kong Bar Association and
the Hong Kong Association of the Pharmaceutical Industry)

2. Members noted that the above paper had been issued for the Bills Committee's information since the last meeting held on 19 July 2007.

III. Meeting with the Administration

(LC Paper No. CB(1)2367/06-07(01) -- Administration's response to issues raised at the Bills Committee meeting on 19 July 2007

LC Paper No. CB(1)2361/06-07(01) -- Proposed Committee Stage amendments – Express Reference to General Council Decision

LC Paper No. CB(1)2361/06-07(02) -- Draft Committee Stage amendments proposed by the Administration

LC Paper No. CB(3)451/06-07 -- The Bill

LC Paper No. CB(1)1634/06-07(01) -- Marked-up copy of the Bill prepared by the Legal Service Division)

3. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

Proposed section 72B

4. On declaration of extreme urgency for public health problem, members noted that proposed Committee Stage amendments (CSAs) (i.e. subsections (2) and (3)) were added to proposed section 72B stating that "the period of extreme urgency declared under subsection (1) continues to run until such a date as may be specified by the Chief Executive in Council by notice published in the Gazette terminating the period of extreme urgency" and "a notice published under subsection (1) or (2) is subsidiary legislation." Members were of the view that the end date of the period of extreme urgency should be specified in the notice so as to provide certainty to all relevant parties, in particular those who had a commercial interest in the industry concerned. The Administration explained that since it was difficult, if not impracticable, to foresee when a health crisis would be over, the end date of the period of extreme urgency could not therefore be specified beforehand. To ensure that the interests of the concerned parties would be duly protected on the one hand and to allow flexibility for the Administration on the other, Ms Margaret NG suggested that the drafting of proposed CSAs be revised to the effect that the period declared would be kept under regular review until an end date was to be specified by the Chief Executive in Council by notice published in the Gazette terminating

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the period of extreme urgency. Ms NG considered that such an arrangement would provide a mechanism and a legal basis for any party whose interests were affected by the declaration of extreme urgency to apply for a court's order if the Chief Executive in Council did not terminate the period of extreme urgency even after reviewing that it should be so. The Administration undertook to consider, in the light of Ms NG's suggestion, whether additional CSAs should be proposed, and to revert to the Bills Committee with its decision as soon as practicable.

Reference point for calculating the 28-day period for the application for court review under proposed sections 72I(6)(d) and 72Q(1)(c)

5. On the reference point for calculating the 28-day period for the application for court review under sections 72I(6)(d) and 72Q(1)(c), the Administration advised that the current starting point, i.e. the date of the termination of the licence, should be maintained. Nevertheless, to ensure that aggrieved parties other than the licensee, if any, would be given sufficient time to file an application for a court review, the Administration undertook to make special arrangement such that the termination notice under sections 72G(2)(b) or 72P(2)(b) would be advertised in the official journal as soon as practicable (i.e. usually within the same day) and in any case not later than 24 hours from the Director of Health's termination of the relevant licence. Members considered such an arrangement acceptable as a third party, other than the licensee, aggrieved by the termination should still have sufficient time for filing an application for a court review.

Proposed section 72M(1)(b)(iii)

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6. Members commented that some wordings of the proposed CSAs (i.e. "the relevant page on") should be deleted so as to bring out more specifically the reference made under the proposed section 72M(1)(b)(iii). The Administration advised that it would re-consider the drafting of the proposed provision in the light of members' views.

Chinese version of the marked-up version of the Administration's proposed CSAs

LSD and
Admin

7. The Chairman requested the Legal Service Division of the Secretariat to vet the finalized Chinese version of the marked-up version of the Administration's proposed CSAs as well as to sort out the legal and drafting problems, if any, with the Administration; and to revert to the Bills Committee if necessary.

Summing up of the follow-up actions

Admin

8. The Chairman requested the Administration to forward the outstanding revised CSAs to the Secretariat for onward circulation to the Bills Committee for consideration. While members agreed in principle to the policy intent of the Bill and did not seem to be disposed towards proposing CSAs on their own, the Chairman stressed that should members wish to propose CSAs to the Bill, they had

to forward those proposed CSAs to the Secretariat for onward consideration by the Bills Committee. The Chairman added that subject to the CSAs being in order, the Bills Committee would report to the House Committee on 2 November 2007 recommending resumption of the Second Reading debate on 14 November 2007. He also reminded members and the Administration that the deadline for giving notice of CSAs would be 5 November 2007.

IV. Any other business

9. There being no other business, the meeting ended at 3:25 pm.

Council Business Division 1
Legislative Council Secretariat
10 October 2007

**Proceedings of the fifth meeting of
Bills Committee on
Patents (Amendment) Bill 2007
on Wednesday, 19 September 2007, at 2:30 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 – 000042	Chairman	<p>Confirmation of minutes of the meeting held on 19 July 2007 (LC Paper No. CB(1)2368/06-07)</p> <p>Members noted a paper issued since the last meeting held on 19 July 2007</p>	
000156 – 001520	Chairman Administration Ms Margaret NG Mr LI Kwok-ying Mr WONG Ting-kwong	<p>The Administration's briefing on its written response to issues raised at the Bills Committee meeting on 19 July 2007 (LC Paper No. CB(1)2367/06-07(01))</p> <p>On the determination of remuneration by the court as provided under the proposed sections 72I and 72Q, Ms Margaret NG maintained that it was not the best arrangement for the court to determine the amount of remuneration payable to the proprietor of the patent concerned regarding disputes as to import/export compulsory licences. She considered that such disputes should preferably be handled by a tribunal so that any person aggrieved by the decision of the tribunal could apply to the court for a judicial review. She called on the Administration to take her view into consideration when it re-visited the adequacy of the current provisions in the future. The Administration took note of Ms NG's view for future consideration.</p> <p>Discussion of the reference point for calculating the 28-day period for the application for court review under sections 72I(6)(d) and 72Q(1)(c)</p>	

Time marker	Speaker	Subject(s)	Action required
001521 – 005142	Chairman Administration Ms Margaret NG Mr LI Kwok-ying Mr WONG Ting-kwong Assistant Legal Adviser	<p>Discussion of the application and effect of proposed section 72B in relation to the declaration of extreme urgency for public health problem</p> <p>The Administration's briefing on the proposed Committee Stage Amendments in relation to express reference to General Council Decision (LC Paper No. CB(1)2361/06-07(01))</p> <p>Discussion of proposed section 72GA on disposal of patented pharmaceutical products after period of extreme urgency. On the legal obligation imposed upon import compulsory licensee as to take reasonable steps to recall the imported patented pharmaceutical product upon termination of the period of extreme urgency, the Administration pointed out that the concerned licensee would have the incentive to recall those products as he could in return receive payment at cost by the Government. On receipt of the product, the Government should either agree with the local proprietor of the concerned patent on the way to dispose of the product, such as keeping the stock for future use, or destroy the product as soon as practicable in default of agreement with the concerned local proprietor. For avoidance of doubt, the Administration had proposed to add a new provision which stipulated that during the period of negotiation with the local patent proprietor, the stocking and any act involved in the recall which might otherwise infringe the concerned patent should not be regarded as patent infringing.</p> <p>Discussion of the drafting of proposed CSAs under proposed section 72M(1)(b)(iii)</p>	<p>The Administration to follow up as stated in paragraphs 4, 6, 7 and 8 of the minutes</p> <p>LSD to follow up as stated in paragraph 7 of the minutes</p>

Time marker	Speaker	Subject(s)	Action required
		The Chairman's summing up of the follow-up actions	

Council Business Division 1
Legislative Council Secretariat
10 October 2007