

**INTELLECTUAL PROPERTY (MISCELLANEOUS
AMENDMENTS) ORDINANCE 2001**

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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE No. 2 OF 2001

L.S.

TUNG Chee-hwa
Chief Executive
15 February 2001

An Ordinance to amend the Patents Ordinance and the Registered Designs Ordinance, and to provide for related matters.

[]

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Intellectual Property (Miscellaneous Amendments) Ordinance 2001.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Commerce and Industry by notice published in the Gazette.

PART I

PATENTS ORDINANCE AND ITS SUBSIDIARY LEGISLATION

Patents Ordinance

2. Interpretation

Section 2(1) of the Patents Ordinance (Cap. 514) is amended—

- (a) in the definition of “Paris Convention”, by adding “, as revised or amended from time to time” after “1883”;
- (b) in the definition of “Patent Cooperation Treaty”, by adding “, as revised or amended from time to time” after “1970”;
- (c) in the definition of “World Trade Organisation Agreement”, by adding “, as revised or amended from time to time” after “1994”;

(d) by adding—

“ “official journal” (官方公報) means the publication for the time being specified under section 150A as the official journal of record;”.

3. Filing of request to record

Section 15(2) is amended—

(a) in paragraph (e), by repealing everything before subparagraph (i) and substituting—

“(e) where priority is claimed under section 98 in respect of a right of priority enjoyed in the designated patent office on the basis of an earlier application as mentioned in that section, a statement that indicates the details of—”;

(b) in paragraph (f)—

(i) by repealing “a statement indicating whether or not” and substituting “where”;

(ii) by repealing everything after “non-prejudicial disclosure” and substituting “, a statement that indicates the prescribed details relating to the previous disclosure; and”.

4. Designated patent application based on international application

Section 16(c) is repealed.

5. Date of filing of request to record

Section 17(1)(c)(ii) is amended—

(a) by adding “(if any)” after “number”;

(b) by adding “(if any)” after “date”.

6. Publication of request to record

Section 20(1)(c) is amended by adding “and” at the end.

7. Compulsory licenses for standard patents

Section 64(7)(b) is amended by repealing “the licence on”.

8. Priority right

Section 110 is amended by adding—

“(3A) A right of priority arising as a result of the filing in or for any Paris Convention country or WTO member country, territory or area of an application for a patent or other protection in respect of an invention, or an application for a short-term patent under this Part, may be assigned or otherwise transmitted, either with the application or independently; and the reference in subsection (1) to the person’s “successors in title” shall be construed accordingly.”.

9. Short-term patent application based on international application

Section 125 is amended—

- (a) in subsection (3)(d) and (e), by repealing “Chinese Patent Office” and substituting “State Intellectual Property Office”;
- (b) in subsection (6), by repealing everything after “section,” and substituting “ “State Intellectual Property Office” (國家知識產權局) means the State Intellectual Property Office established under the laws of the People’s Republic of China the functions of which include the granting of patents for inventions.”.

10. Costs and expenses in proceedings before court

Section 136(1) is amended by repealing everything between “reasonable” and the full stop.

11. Registrar may specify forms to be used

Section 150 is amended by adding—

“(3) A notice published under subsection (1) shall not be regarded as subsidiary legislation for the purpose of section 34 of the Interpretation and General Clauses Ordinance (Cap. 1).”.

12. Section added

The following is added—

“150A. Power to specify official journal, etc.

(1) The Registrar may from time to time, by notice published in the Gazette, specify a publication to be the official journal of record for the purposes of this Ordinance, with effect as of the date specified in the notice.

(2) Where a publication is specified under subsection (1), every notice, request, document or other matter required by this Ordinance or the rules to be published in the official journal shall, from the effective date specified in the notice, be published in the publication so specified, and any reference in this Ordinance or the rules to the official journal shall be construed accordingly.

(3) The Registrar may publish or cause to be published a journal in which there may be published such documents and information relating to a patent or an application for a patent as the Registrar thinks fit.

(4) For the avoidance of doubt, the Registrar may specify the Gazette or the journal referred to in subsection (3) to be the official journal of record.

(5) A publication specified under subsection (1) and the journal referred to in subsection (3) need not be in a documentary form.

(6) A notice published under subsection (1) shall not be regarded as subsidiary legislation for the purpose of section 34 of the Interpretation and General Clauses Ordinance (Cap. 1).”.

13. Amendment of Schedule 1

Section 153 is amended—

- (a) in paragraph (b)(ii), by repealing the full stop and substituting “; and”;
- (b) by adding—
 - “(c) otherwise amend Schedule 1.”.

14. “official journal” substituted for “Gazette”

Sections 20(1)(c), 27(3)(c), 29(3), 30(2), 34(2), 35(2), 39(1)(a), 40(3), 41(3), 43(3)(b), 44(3) and (6), 46(5), 48(3), 64(4), 66(2)(a), 118(2)(c), 126(1)(a), 148(1) and 150(1) are amended by repealing “Gazette” and substituting “official journal”.

Patents (Designation of Patent Offices) Notice

15. Interpretation

Section 2 of the Patents (Designation of Patent Offices) Notice (Cap. 514 sub. leg.) is amended—

- (a) by repealing the definition of “Chinese Patent Office”;
- (b) by adding—

“ “State Intellectual Property Office” (國家知識產權局) means the State Intellectual Property Office established under the laws of the People’s Republic of China the functions of which include the granting of patents for inventions;”.

16. Designation of patent offices

Section 3 is amended by repealing “Chinese Patent Office” and substituting “State Intellectual Property Office”.

Patents (General) Rules

17. Interpretation

Section 2(1) of the Patents (General) Rules (Cap. 514 sub. leg.) is amended—

- (a) by repealing the definition of “Chinese Patent Office”;
- (b) by adding—

“ “State Intellectual Property Office” (國家知識產權局) means the State Intellectual Property Office established under the laws of the People’s Republic of China the functions of which include the granting of patents for inventions;”.

18. “State Intellectual Property Office” substituted for “Chinese Patent Office”

Sections 8(2)(d)(v), 15(1)(c) and (2)(a), 36(a), 54(a) and 78(1) are amended by repealing “Chinese Patent Office” wherever it appears and substituting “State Intellectual Property Office”.

19. “official journal” substituted for “Gazette”

Sections 31(5), 34(4), 40(1), 48(3), 88(1)(c)(iii) and 93(2) and paragraph 2(4)(c) of Schedule 1 are amended by repealing “Gazette” and substituting “official journal”.

PART II

REGISTERED DESIGNS ORDINANCE AND ITS SUBSIDIARY LEGISLATION

Registered Designs Ordinance

20. Interpretation

Section 2(1) of the Registered Designs Ordinance (Cap. 522) is amended by adding—

“ “official journal” (官方公報) means the publication for the time being specified under section 84A as the official journal of record;”.

21. Priority right

Section 15(1) is amended—

- (a) by repealing “or his successor in title”;
- (b) by adding “, or his successor in title,” after “member”.

22. Costs and expenses in proceedings before court

Section 62(1) is amended by repealing everything between “reasonable” and the full stop.

23. Hours of business and business days

Section 71 is amended—

- (a) in subsection (1), by adding “and the days that are business days for that purpose” after “Ordinance”;
- (b) in subsection (2), by repealing “following” where it twice appears.

24. Registrar may specify forms to be used

Section 84 is amended by adding—

“(3) A notice published under subsection (1) shall not be regarded as subsidiary legislation for the purpose of section 34 of the Interpretation and General Clauses Ordinance (Cap. 1).”.

25. Section added

The following is added before Part VIII—

“84A. Power to specify official journal, etc.

(1) The Registrar may from time to time, by notice published in the Gazette, specify a publication to be the official journal of record for the purposes of this Ordinance, with effect as of the date specified in the notice.

(2) Where a publication is specified under subsection (1), every notice, request, document or other matter required by this Ordinance or the rules to be published in the official journal shall, from the effective date specified in the notice, be published in the publication so specified, and any reference in this Ordinance or the rules to the official journal shall be construed accordingly.

(3) The Registrar may publish or cause to be published a journal in which there may be published such documents and information relating to a registered design or an application for registration as the Registrar thinks fit.

(4) For the avoidance of doubt, the Registrar may specify the Gazette or the journal referred to in subsection (3) to be the official journal of record.

(5) A publication specified under subsection (1) and the journal referred to in subsection (3) need not be in a documentary form.

(6) A notice published under subsection (1) shall not be regarded as subsidiary legislation for the purpose of section 34 of the Interpretation and General Clauses Ordinance (Cap. 1).”.

26. “official journal” substituted for “Gazette”

Sections 25(d), 71(1) and 84(1) are amended by repealing “Gazette” and substituting “official journal”.

Registered Designs Rules

27. “official journal” substituted for “Gazette”

(1) Sections 2(2)(a), 27(1), 30, 31(2), 32(5), 37(2)(b), 38(1), 46(2), 51(2) and (3), 56, 60(3) and 62(3) and (4) of the Registered Designs Rules (Cap. 522 sub. leg.) are amended by repealing “Gazette” and substituting “official journal”.

(2) Fee No. 9 of the Schedule is amended, in column 2, by repealing “advertisement in the Gazette” and substituting “advertisement in the official journal”.

PART III

REPEAL OF OBSOLETE RULES

28. Repeal

The Registration of Patents Rules (Cap. 42 sub. leg.) and the Registration of Patents (Fees) Rules (Cap. 42 sub. leg.) are repealed.