

立法會
Legislative Council

LC Paper No. CB(1) 752/02-03
(These minutes have been seen
by the Administration)

Ref: CB1/SS/2/02/1

Subcommittee on Patents (General) (Amendment) (No. 2) Rules 2002

Minutes of meeting
held on Monday, 9 December 2002, at 10:45 am
in Conference Room B of the Legislative Council Building

- Members present** : Hon Margaret NG (Chairman)
Hon Cyd HO Sau-lan
Hon HUI Cheung-ching, JP
Hon SIN Chung-kai
Hon Miriam LAU Kin-ye, JP
Hon Audrey EU Yuet-mee, SC, JP
- Members absent** : Dr Hon LUI Ming-wah, JP
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon CHAN Kam-lam, JP
- Public officers attending** : Mr Kenneth MAK
Deputy Secretary for Commerce, Industry and
Technology (Commerce and Industry)
- Mr Donald CHEN
Principal Assistant Secretary for Commerce,
Industry and Technology (Commerce and Industry)
- Mrs Teresa GRANT
Assistant Director of Intellectual Property
- Ms Finnie QUEK
Senior Solicitor (Registration), Intellectual
Property Department
- Ms Leonora W Y IP
Senior Government Counsel, Department of Justice

Clerk in attendance : Mr S C TSANG
Senior Assistant Secretary (1)7

Staff in attendance : Miss Connie FUNG
Assistant Legal Adviser 3

Ms Cindy CHENG
Senior Assistant Secretary (1)4

Action

I Meeting with the Administration

(LC Paper No. CB(1) 477/02-03(01) -- List of follow-up actions arising from the discussion at the meeting on 29 November 2002

LC Paper No. CB(1) 455/02-03 -- Administration's response to CB(1) 477/02-03(01)

LC Paper No. CB(1) 477/02-03(02) Letter dated 6 December 2002 from Assistant Legal Adviser 3 to the Administration)

The Subcommittee deliberated (Index of proceedings attached at **Annex**).

2. The Administration undertook to move a motion to repeal the Patents (General) (Amendment) (No.2) Rules 2002 (the Amendment Rules). The Administration also undertook to take follow-up actions as follows:

Admin

- (a) to conduct a review of the existing regime of patent registration, particularly on provisions on time limits, taking into account the views of the trade;
- (b) to consult the relevant Panels, such as the Panel on Commerce and Industry and Panel on Administration of Justice and Legal Services on the outcome of the review; and
- (c) to outline the scope of the review when the Secretary for Commerce, Industry and Technology moved the motion to repeal the Amendment Rules at the Legislative Council meeting on 18 December 2002.

II Any other business

3. There being no other business, the meeting ended at 11:40 am.

**Proceedings of the meeting of the
Subcommittee on Patents (General) (Amendment) (No. 2) Rules 2002
on Monday, 9 December 2002, at 10:45 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000305	Chairman	Opening remarks	
000305 - 001000	ALA3	Highlight on areas of concern in the light of judgment of the Court of Final Appeal (CFA) on an appeal case	
001000 - 001230	Chairman ALA3	No urgency to amend the Patents (General) Rules (the Rules) given that CFA had already declared section 39(1) of the Rules ultra vires and directed the Registrar of Patents (the Registrar) to record the appellant's amendment of patent specification	
001230 - 001545	Administration Ms Audrey EU Ms Miriam LAU Chairman	Proposal to move a motion to repeal the Patents (General) (Amendment) (No. 2) Rules 2002 (the Amendment Rules) in the light of CFA's judgment and members' views and to take the opportunity to consider in greater detail the appropriate amendments	Admin
001545 - 001807	Ms Audrey EU Chairman Administration	Propriety of legislative amendment before the conclusion of a related court case. Emphasis on the need to mention in the Legislative Council brief any court case relevant to the legislative amendment in question.	
001807 - 003250	Chairman Ms Audrey EU Ms Miriam LAU Administration	Request for a review of the existing regime on patent registration, particularly on provisions on time limits, taking into account the views of the trade	Admin

Time marker	Speaker	Subject(s)	Action required
003250 - 003454	Ms Cyd HO Mr HUI Cheung-ching Ms Miriam LAU Chairman	Suggestion to consult the relevant Panels, such as Panel on Commerce and Industry and Panel on Administration of Justice and Legal Services on the outcome of the review	Admin
003454 - 003745	Chairman Ms Miriam LAU Administration	Concern that patent proprietors who failed to file their notices of amendment of patent specification within the time limit under section 39(1) of the Rules might claim legal remedies against the Registrar consequent upon the CFA's ruling The Administration did not envisage that the Registrar would have substantial liability in this regard.	
003745 - 003902	Chairman	Suggestion to outline the scope of the review when the Secretary for Commerce, Industry and Technology moved the motion to repeal the Amendment Rules at the Legislative Council meeting on 18 December 2002	Admin

Note: The audio records of the above proceedings are kept at the Legislative Council Library.

Council Business Division 1
Legislative Council Secretariat
17 January 2003