

**立法會**  
***Legislative Council***

LC Paper No. CB(1)2147/10-11(05)

Ref. : CB1/PL/CI

**Panel on Commerce and Industry**

**Meeting on 17 May 2011**

**Background brief on the patent registration system in Hong Kong**

**Purpose**

This paper provides background information on the patent registration system in Hong Kong and a summary of views and concerns expressed by Members during previous discussions on the subject.

**Background**

2. Patents protect an invention by giving the patent owner a legal right to prevent others from manufacturing, using, selling or importing the patented invention. The Patents Ordinance (Cap. 514) provides for the relevant requirements under the patent registration system in Hong Kong. For the purpose of granting a patent, the Hong Kong Patents Registry will verify the documents and information submitted to ensure that the registration requirements are met. It does not conduct substantive examination, i.e. it does not assess whether the invention is novel, involves an inventive step and is susceptible to industrial applications. The system is hence also referred to as a "re-registration" system. There are two types of patent in Hong Kong, namely standard patent and short-term patent.

3. Standard patents obtained in Hong Kong are based on a patent granted by one of three "designated patent offices". These "designated patent offices", which adopt the "original grant" patent system, are the State Intellectual Property Office, the United Kingdom Patent Office and the European Patent Office. The application process involves two stages. At Stage one, the applicant has to file a "request to record" in Hong Kong within six months after the date of publication of corresponding application in a "designated patent

office". At Stage two, the applicant has to file a "request for registration and grant" in Hong Kong within six months after the date of grant of the designated patent by the "designated patent office" or publication of the "request to record" in Hong Kong, whichever is later. The Hong Kong Patents Registry will normally grant the patent within a few months after receiving the relevant certifying document from the "designated patent office". The total application and publication fee for a standard patent is \$896. A standard patent may remain in force for a maximum term of 20 years.

4. As for short-term patent, the applicant files the application direct with the Hong Kong Patents Registry without having to go through a "designated patent office". The applicant will need to submit a search report prepared either by one of the "designated patent offices" or by any International Searching Authority appointed pursuant to Article 16 of the Patent Co-operation Treaty. The Hong Kong Patents Registry will grant the short-term patent after satisfying itself that the information required is fully furnished. Such a process normally takes a few months. The total application and publication fee for a short-term patent is \$823. A short-term patent may remain in force for a maximum term of eight years.

5. According to the Administration, the statistics of patent applications in recent years are summarized as follows:

<b>Year</b>	<b>Standard patent</b>	<b>Short-term patent</b>
<b>2005-2010</b>		
Average no. of applications per year	around 12 000	around 530
Average no. of grants per year	around 5 200	around 460
<b>2010</b>		
No. of applications	11 702	614
No. of grants	5 353	522

### **Previous discussions**

6. Members have discussed at various forums issues on the patent registration system in Hong Kong since 2009.

7. At the Council meeting on 9 December 2009, Hon WONG Ting-kwong raised a question on the patent registration system. He asked the Administration to consider setting up an "original grant" patent system in Hong Kong, and provide training to local talents for preparing patent specifications and setting up a system to recognize the relevant professional qualifications.

8. At the Panel meeting on 15 March 2011, the Administration briefed the Panel on Commerce and Industry (the Panel) on the development of the trade relations between the Mainland and Hong Kong, and on matters relating to commerce and industry discussed at the 16th Working Meeting of the Hong Kong/Guangdong Co-operation Joint Conference held on 28 February 2011 in Guangzhou. Panel members called on the Administration to consider establishing an "original grant" patent system, in particular with the co-operation between Hong Kong and the Guangdong Province, and exploring the possibilities of fostering mutual recognition of patent system between the two places under the Mainland and Hong Kong Closer Economic Partnership Arrangement. Panel members also expressed that if the Mainland enterprises could apply for internationally recognized standard patents for their products in Hong Kong, it would help them tap the overseas market, thus creating huge business opportunities for the patent industry in Hong Kong.

9. At the special meeting of the Finance Committee on 21 March 2011, some Members raised questions on the timetable and details of the review of the Hong Kong patent system and the public consultation exercise on the review. Members noted that the Administration did not have any preconceived notion or stance regarding the scope and direction of the review. The Administration would listen carefully to proposals and views from all fronts before deciding whether and if so how the current system should be changed. A forum was held on 28 February 2011 to kick start the review. Over 160 representatives from the legal, patent agency, industry, academic and scientific research and development sectors attended the forum. The review might have far-reaching impact on Hong Kong's patent system as well as the development of innovation and technology. The Administration would consider opinions from all fronts with a view to formulating, in about a year, the general direction for the further development of Hong Kong's patent system.

### **Recent developments**

10. At the Council meeting on 11 May 2011, Dr Hon PAN Pey-chyou raised a question on the patent registration in Hong Kong. He asked the Administration to consider introducing the "original grant" patent system, and the "utility model patents" system to dovetail with the unique features of local industries and foster the development of creative industries in Hong Kong. He also called on the Administration to provide legal assistance to Hong Kong's small and medium enterprises in respect of the vetting procedures for patent rights and in the event of patent disputes so that they would not lose the opportunity of having fair arbitration due to huge arbitration costs.

**Latest position**

11. The Administration will brief the Panel on 17 May 2011 on the outline and scope of a proposed review of Hong Kong's patent system.

**Relevant papers**

Administration's written reply to a question by Hon WONG Ting-kwong at the Council meeting on 9 December 2009

<http://www.info.gov.hk/gia/general/200912/09/P200912090197.htm>

Minutes of Commerce and Industry Panel meeting on 15 March 2011

<http://www.legco.gov.hk/yr10-11/english/panels/ci/minutes/ci20110315.pdf>

Administration's replies to initial written questions raised by Finance Committee Members in examining the Estimates of Expenditure 2011-12: serial nos. CEDB(CIT)105, CEDB(CIT)134 and CEDB(CIT)142

[http://www.legco.gov.hk/yr10-11/english/fc/fc/w\\_q/cedb-cit-e.pdf](http://www.legco.gov.hk/yr10-11/english/fc/fc/w_q/cedb-cit-e.pdf)

Administration's reply to a question by Dr Hon PAN Pey-chyou at the Council meeting on 11 May 2011

<http://www.info.gov.hk/gia/general/201105/11/P201105110191.htm>

Council Business Division 1  
Legislative Council Secretariat  
12 May 2011