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Panel on Commerce and Industry

Meeting on 17 December 2013

**Updated background brief on the review of the patent system and
development of intellectual property trading in Hong Kong**

Purpose

This paper gives an account on the review of the patent system and the development of intellectual property (IP) trading in Hong Kong. It also summarizes views and concerns expressed by members during the 2012-2013 legislative session on the subjects.

Background

Review of patent system in Hong Kong

2. Pursuant to a comprehensive review of the patent system conducted in October 2011 and based on the recommendations made by the Advisory Committee on Review of the Patent System in Hong Kong (the Advisory Committee) regarding the positioning of the patent system, the Government announced in February 2013 the way forward for the development of the patent system with the following key points:

- (a) introducing an Original Grant Patent (OGP) system with substantive examination outsourced to other patent office(s) whilst retaining the current re-registration system;
- (b) retaining the short-term patent system with suitable refinements;
and

- (c) developing a full-fledged regulatory regime on patent agency/services in the long run, which has to be achieved in stages, with possible transitional measures.

3. The Administration has commenced preparatory work on the implementation of the OGP system and the refined short-term patent system in consultation with the Advisory Committee. Subject to the progress of implementation and the necessary legislative amendments, the Administration tentatively aims at launching both the OGP system and the refined short-term patent system in 2016-2017 at the earliest.

Development of intellectual property trading in Hong Kong

4. Hong Kong is one of the innovative and creative economy leaders in the region. As an established international financial and trading centre, Hong Kong's favourable and secure business environment creates an ideal foundation for the development of intellectual property (IP) trading and has the potential to develop into a regional IP trading hub.

5. Pursuant to the Chief Executive's announcement in the 2013 Policy Address, a Working Group on IP trading (the Working Group) was set up in March 2013 to advise on the overall strategies to promote the development of Hong Kong as an IP trading hub, and to identify appropriate policy and other support measures to facilitate IP trading in Hong Kong. The Working Group, led by the Secretary for Commerce and Economic Development, comprises Government representatives, industry stakeholders and experts from different fields.

6. The Working Group on IP Trading has formulated an overall strategic framework and identified four strategic areas, namely enhancing the IP protection regime; supporting IP creation and exploitation; fostering IP intermediary services and manpower capacity; and pursuing promotion, education and external collaboration for promoting Hong Kong as a premier IP trading hub in the region. A summary of the strategic framework is in **Appendix I**.

Deliberations of the Panel

7. The Panel was briefed by the Administration on the way forward for the development of the patent system and the development of IP trading in Hong Kong at its meetings on 19 February and 21 May 2013 respectively. Members' views and concerns were summarized in the ensuing paragraphs

Review of the patent system in Hong Kong

8. The Panel supported the strategic directions recommended by the Advisory Committee, which included introducing an OGP System, outsourcing the substantive examination capability in the short to medium term, retaining the current re-registration system to offer users a choice of the OGP and the existing system, and enhancing the current short-term patent system by making substantive examination a pre-requisite to the commencement of infringement proceedings. Members considered that a robust patent system tailor-designed to meet local needs and in line with international standard would facilitate the development of Hong Kong into a regional innovation and technology hub. Members urged the Administration to take forward the implementation of the OGP system as soon as possible, and to conduct public education to promote OGP awareness.

9. There was a general consensus among members that the Administration should progressively develop Hong Kong's own substantive examination capability in the long run and build up local expertise in drafting and processing patent applications. The Administration was requested to forge closer cooperation with relevant Mainland authorities, to work for mutual recognition of patents, and to negotiate facilitation of patent applications with the Mainland and other jurisdictions. The Administration advised that in-house substantive examination capability as a long-term goal would be developed in stages, focusing on specific technological areas in which Hong Kong had acquired considerable expertise. The Administration would develop outsourcing arrangements with the preferred patent office(s) identified.

10. On human capital development, members urged the Administration to liaise with the education sector and patent industry to offer courses on patent agency services and to step up efforts to attract talents and broaden the career paths for local graduates in science and technology. Some members called for an early regulation of patent agency services to better protect patent owners and enhance the credibility of the patent agency profession, which in turn would strengthen Hong Kong's position in negotiating mutual recognition of patents with the Mainland and other jurisdictions. The Administration advised that a full-fledged regulatory regime would be developed in stages upon the commencement of OGP.

Development of intellectual property trading in Hong Kong

11. The Panel welcomed the Administration's initiatives to foster the development of IP trading in Hong Kong. Members considered a sound IP protection regime and the development of IP trading could encourage

innovation and technology (I&T) development, enhance local research and development (R&D) capability, facilitate technology transfer, and promote commercialization of R&D results and branding development. The consequential increase in the demand for high value-added IP intermediary services would also help create quality jobs in Hong Kong. Members called on the Administration to leverage on Hong Kong's advantages as an international financial centre and the gateway to China to develop Hong Kong into a regional IP trading hub. Members also urged the Administration to provide the necessary hardware and software underpinnings in terms of policy measures, funding, human resource development, and public education to promote the sustained development of IP trading so as to complement Hong Kong's efforts to become a regional I&T hub.

12. Members suggested that the Administration should step up efforts to promote respect for IP rights and heighten the business sectors' awareness of IP trading to encourage IP creation, exploitation, and commercialization. Local enterprises, especially small and medium enterprises, should be given more support to protect and capitalize on their intellectual assets and increase their competitiveness through branding and upgrading.

13. Some members raised concern about the lapse of the Copyright (Amendment) Bill 2011 following the end of the previous term of the Legislative Council and urged for early legislation to enhance copyright protection in the digital environment. The Administration advised that in view of the complexity of the legislative proposal, the Administration would continue to engage different stakeholders and take full account of the views received to address concerns on related copyright issues, and ensure the continuous effectiveness of the copyright laws in the digital environment. A four-month public consultation exercise on the "Treatment of Parody under the Copyright Regime" was launched from 11 July to 15 November 2013.

Latest position

14. The Administration will consult the Panel on 17 December 2013 on the proposed creation of one supernumerary post of Assistant Director of Intellectual Property at DL2 rank in the Intellectual Property Department for three years with effect from 1 April 2014 to carry out the work relating to the implementation of the OGP system and the promotion of IP trading.

Relevant papers

15. A list of relevant paper is in **Appendix II**.

Council Business Division 1
Legislative Council Secretariat
13 December 2013

Strategic Framework

Vision

Position and promote Hong Kong as the premiere IP trading hub in Asia.

Mission

Leverage and further Hong Kong's advantages in financial, legal and physical infrastructure, IP regime, professional services and specific role as "gateway to China", in attracting international IP trading and management activities to take place in Hong Kong

Build up the necessary clusters conducive to the overall development of Hong Kong as a knowledge-based economy that spearheads exploitation and commercialisation of IP and supports enterprises to make the most of IP as a core business asset that should be built, managed, valued and leveraged strategically to drive innovation and growth

Explore means to promote Hong Kong's creative industries, innovative technologies and IP economies through IP creation, protection, exploitation, management and trading

Strategic Areas

I. Enhancing the IP protection regime

Focus Strategies

1. Develop an Original Grant Patent (OGP) system in Hong Kong in parallel with the existing re-registration system, and encourage quality filings from local, Mainland and overseas

2. Keep the other components of our IP regime (copyright, registered design, trademarks, etc) under constant review to ensure that the system follows international norms, on par with IP regimes of advanced economies, and conducive to IP trading

II. Supporting IP creation and exploitation

3. Support industries in meeting strategic needs through creation, exploitation, acquisition and management of IP

4. Support R&D, technology transfer, and acquisition and commercialisation of IP

5. Support creative industries in engaging in licensing and franchising arrangements

III. Fostering IP intermediary services and manpower capacity

6. Facilitate the provision of highly specialised professional services in IP trading, e.g. –

- a. IP valuation
- b. IP financing
- c. IP insurance
- d. IP arbitration and mediation
- e. IP due diligence
- f. IP matching services (e.g. IP trading platforms)

7. Attract and nurture talents in IP activities, support the building of strong IP related professions

IV. Promotion, education and external collaboration

8. Brand and market Hong Kong as a premiere IP trading hub to attract overseas/ Mainland IP owners and users, as well as inter-mediaries

9. Foster an IP awareness culture in society especially among SMEs and the younger generation, and promote the importance and opportunities brought by IP management and trading

10. Collaborate with Mainland, overseas and international IP authorities in fostering the development of IP trading inter-nationally and in the region

**Review of the patent system and
development of intellectual property trading in Hong Kong**

List of relevant papers

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
19/2/2013	Panel on Commerce and Industry	Administration's paper	CB(1)534/12-13(05) http://www.legco.gov.hk/yr12-13/english/panels/ci/papers/ci0219cb1-534-5-e.pdf
		Updated background brief	CB(1)534/12-13(06) http://www.legco.gov.hk/yr12-13/english/panels/ci/papers/ci0219cb1-534-6-e.pdf
		Minutes of meeting	CB(1)830/12-13 http://www.legco.gov.hk/yr12-13/english/panels/ci/minutes/ci20130219.pdf
21/5/2013	Panel on Commerce and Industry	Administration's paper	CB(1)1026/12-13(06) http://www.legco.gov.hk/yr12-13/english/panels/ci/papers/ci0521cb1-1026-6-e.pdf
		Background brief	CB(1)1026/12-13(07) http://www.legco.gov.hk/yr12-13/english/panels/ci/papers/ci0521cb1-1026-7-e.pdf
		Minutes of meeting	CB(1)1485/12-13 http://www.legco.gov.hk/yr12-13/english/panels/ci/minutes/ci20130521.pdf