



中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

來函編號 YOUR REF : CITB 06/18/23
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Commerce and Economic Development Bureau
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2 Tim Mei Avenue, Tamar
Hong Kong

16 March 2016

Dear Ms TAM,

Patents (Amendment) Bill 2015

Further to my letters of 8 January 2016 and 17 February 2016, I would like to seek clarification on the issues set out below.

Part I: Legal Issues

Clauses 96 and 106 of the Bill

I have mentioned in my second letter in relation to the problems in the definitions of "non-Hong Kong application" and "specified application". I note that similar problems appear in the new section 108A and the proposed section 114(7) of the Patents Ordinance (Cap. 514).

Clauses 116 and 120 of the Bill

I have asked in my second letter that to enable an applicant to respond to the notice given by the Registrar that the standard patent (O) application does not comply with any examination requirement, whether the Registrar should be expressly required to provide the reason(s) of the Registrar's opinion in the notice under the new section 37V(2) of Cap. 514. Please consider whether similar requirement should be imposed on the Registrar under the proposed section 124 and the new section 127D(2) of Cap. 514.

Clause 129 of the Bill

The new section 144A of Cap. 514 makes it an offence for any person who knowingly uses or permits the use of, among others, a title or description that would be likely to give the impression that the person holds a qualification, recognized by law or endorsed by the Government, for providing patent agency services in Hong Kong in the course of or in connection with the person's business, trade or profession in Hong Kong. It is noted that for offence provisions in other legislation governing professionals, the expression "would be likely to give the impression" has not been used. Instead, for example, under section 42(1)(h)(i) of the Professional Accountants Ordinance (Cap. 50), the expression "intended to cause, or which may reasonably cause, any person to believe" is used. Please clarify the reason(s) for using the expression "would be likely to give the impression" in the new section 144A of Cap. 514.

Part II: Drafting Issue

Clause 120 of the Bill

Under the English text of the new section 127E(4) of Cap 514, should "are allowed" rather be "is allowed"?

I would be grateful if you could let me have your reply in bilingual form as soon as possible, preferably on or before 12:00 pm on 22 March 2016.

Yours sincerely,



(Wendy KAN)
Assistant Legal Adviser

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