

**For discussion on  
20 April 2021**

**Legislative Council  
Panel on Commerce and Industry**

**Implementation of the Original Grant Patent System**

**Purpose**

The Original Grant Patent (“OGP”) system was launched in Hong Kong on 19 December 2019. This paper briefs Members on the implementation of the system.

**Preamble**

2. The fourth session of the 13th National People’s Congress approved the “Outline of the 14th Five-Year Plan for National Economic and Social Development of the People’s Republic of China and the Long-Range Objectives Through the Year 2035” (“the 14th Five-Year Plan”) on 11 March 2021, which sets out the blueprint and action agenda for the social and economic development of the country in the next five years. The 14th Five-Year Plan supports the future development of Hong Kong in many key areas, demonstrating the Central Government’s unwavering support for Hong Kong. On economic development, the 14th Five-Year Plan supports Hong Kong to consolidate and enhance its competitive advantages, including supporting Hong Kong to develop into a regional intellectual property (“IP”) trading centre and promoting service industries for high-end and high value-added development. The Government of the Hong Kong Special Administrative Region has been implementing a wide range of measures to promote IP commercialisation and IP trading, and to strengthen Hong Kong’s role as an IP trading centre in the region in accordance with the “Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area (“GBA”)”. These measures include reviewing the IP protection regime regularly to keep abreast with the times, and promoting free IP Consultation Service, IP Manager Scheme and related training programmes to help innovation and technology enterprises commercialise their research and development results. We will also leverage on the advantages of the “One Country, Two Systems” and seize the opportunities brought by the GBA development to further reinforce

collaboration with the IP authorities of the Mainland and Macao on IP protection, management and exploitation in the GBA, including strengthening the promotion and development of the OGP system and encouraging enterprises to use Hong Kong's OGP system and professional services to enter the international market.

## **The OGP System**

3. The patent system is a key component of the IP protection infrastructure, and one of the important elements for the development of innovation and technology. With the rising global awareness of IP protection, the demand for IP trading is also increasing. The Government launched the OGP system to ensure that the local patent system advances with the times, meets the needs of Hong Kong's long-term economic development, and supports Hong Kong's development as an international innovation and technology centre. The OGP system provides an alternative path to the existing "re-registration" route<sup>1</sup> for patent applicants to seek standard patent protection directly in Hong Kong with a maximum term of 20 years. An OGP application is subject to substantive examination by the Patents Registry of the Intellectual Property Department ("IPD") for determining whether an invention is novel, involves an inventive step, and is susceptible of industrial application before a patent can be granted.

## **Preparatory Tasks**

4. In preparation for the launch of the OGP system, the Patents (Amendment) Ordinance 2016 and the Patents (General) (Amendment) Rules 2019 were enacted in 2016 and 2019 respectively. We also completed a number of related preparatory tasks in 2019, including drawing up the practice guidelines of the Patents Registry and workflows for examining OGP applications, setting up an electronic system to support the OGP system, and training officers to examine patent applications. Prior to the implementation of the OGP system, IPD conducted or participated in 15 seminars or briefing sessions in the second half of 2019 to introduce the OGP system to local IP practitioners' associations, small and medium enterprises ("SMEs"), start-ups, university technology transfer centres, scientific research institutions, foreign chambers of commerce, etc. We

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<sup>1</sup> Under the "re-registration" route, a patent applicant is required to first file an application at one of the three designated patent offices outside Hong Kong, to be followed by an application to the Intellectual Property Department for re-registration, before he/she can obtain a standard patent by re-registration in Hong Kong.

also promoted and publicised the OGP system through distributing fact sheets and booklets to the public, placing advertisements on different media, and conducting interviews with local media organisations.

## **Filing and Examination of OGP Applications**

5. The OGP system was officially launched on 19 December 2019 and has been running smoothly. As of 28 February 2021, the Patents Registry received a total of 312 OGP applications, involving 112 applicants. Among the applications received, approximately 37.5% (117 applications) were filed by Hong Kong residents or local enterprises, and approximately 62.5% (195 applications) were filed by non-local applicants. Regarding the applications filed by non-local applicants, the top five origins were the Republic of Korea, the Mainland of China, the United States, Japan and the United Kingdom.

6. The OGP applications can be broadly classified into three main technical areas<sup>2</sup>, namely electricity, mechanical engineering and chemistry, which respectively accounted for 24.8%, 54.7% and 20.5% of the filings by local applicants, and 74.9%, 19.0% and 6.2% of the filings by non-local applicants. It is worth noting that one-third of the OGP applications were first filings<sup>3</sup> worldwide for the respective inventions, and about 80% of the applications filed by local applicants were first filings.

7. In line with the processing time of the mainstream patent offices in the international community, the entire examination process from application to grant of an OGP normally takes about two to three years to complete. Upon receiving an OGP application, the Patents Registry will first conduct a formality examination of the application. If the invention and the application document comply with the relevant legal requirements, the application will generally be published 18 months from the filing date of the application<sup>4</sup>. The application can then proceed to the substantive

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<sup>2</sup> The scope of these three technical areas is broad, covering eight major technical fields under the International Patent Classification: human necessities; chemistry, metallurgy; physics; electricity; performing operations, transporting; textiles, paper; fixed constructions; and mechanical engineering, lighting, heating, weapons, blasting.

<sup>3</sup> That is, the applicant has not filed a patent application for the invention in a patent office outside Hong Kong before.

<sup>4</sup> Applicant may also file a request with the Patents Registry for early publication of his/her patent application.

examination stage<sup>5</sup>. So far, the Patents Registry has published 151 OGP applications and commenced substantive examination for some of the applications. The Patents Registry’s preliminary estimate is that the first OGP will be granted in 2022.

## Survey on OGP Filings

8. In order to better understand the background and business of the OGP applicants and their reasons for filing OGP applications in Hong Kong, IPD invited all applicants who had filed OGP applications from 19 December 2019 (the launch date of the OGP system) to 31 December 2020 to complete questionnaires<sup>6</sup>, involving a total of 265 OGP applications. We received responses from 64 applicants (“respondents”) for their 194 applications. In terms of the total number of applications, the response rate is 73%. The major findings of the survey were as follows:

### (a) Profile of the respondents’ businesses

- Out of the 64 respondents, 37 were local applicants and the remaining 27 were non-local applicants; about three-quarters were private or commercial enterprises, and about 20% of the applications were filed by individuals;
- Among the local respondents, about half of them were SMEs; and about a quarter of them were start-ups<sup>7</sup>;
- Among the non-local respondents, about one third of them were SMEs; and about a quarter of them were start-ups.

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<sup>5</sup> The applicant may file a request with the Patents Registry to proceed with substantive examination any time within three years after the date of filing (or the earliest date of priority claimed (if applicable)). If the applicant does not file such a request within three years of his/her application, the concerned application will be regarded as withdrawn.

<sup>6</sup> Some applicants have multiple inventions and filed multiple applications. As each patent application has different background, we invited applicant to submit a separate questionnaire for each application he/she filed.

<sup>7</sup> As indicated by the establishment day of the enterprise.

(b) Reasons for filing OGP applications in Hong Kong<sup>8</sup>

(i) The major reasons cited by local respondents for choosing to file OGP applications in Hong Kong included:

- “Enjoying the convenience brought about by direct filing for seeking standard patent protection in Hong Kong” (53.5%);
- “Convenience for securing the first/earliest filing date” (48.8%);
- “Hong Kong is the major or key target market for the underlying invention” (48.8%).

(ii) As for non-local respondents<sup>9</sup>, the major reasons cited for choosing to file OGP applications in Hong Kong included:

- “Saving time for obtaining a standard patent grant” (75.5%);
- “Hong Kong is the major or key target market for the underlying invention” (17.2%);
- “Enjoying the convenience brought about by direct filing for seeking standard patent protection in Hong Kong” (16.6%).

(c) Patent filing strategies other than OGP applications

- If there were no OGP system in Hong Kong, local respondents indicated that they would opt for filing short-term patent applications in Hong Kong (55.8%) or applying for standard patents via the “re-registration” route (46.5%);

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<sup>8</sup> The percentages referred to in paragraphs 8(b) & (c) were calculated in terms of the total number of applications submitted by the 64 respondents.

<sup>9</sup> Among the non-local respondents (submitted a total of 151 questionnaires), one respondent has submitted 109 OGP applications and completed one questionnaire for each of the concerned applications. If the responses from this respondent were not taken into account, the main reason for other non-local respondents for filing OGP applications in Hong Kong would be “Hong Kong is the major or key target market for the underlying invention” (representing 61.9% of the relevant applications from the non-local respondents concerned).

- If there were no OGP system in Hong Kong, non-local respondents<sup>10</sup> indicated that they would likely forgo patent filing in Hong Kong altogether (60.9%), apply for standard patents in Hong Kong via the “re-registration” route (36.4%), or file short-term patent applications in Hong Kong (21.2%).

## **Preliminary Observations on the Implementation of the OGP System**

9. The Patents Registry received a total of 312 applications in the first 15 months of the implementation of the OGP system. The overall volume of applications has exceeded the initial projection of about 100 to 200 applications for the first year. The survey results also revealed that the OGP system was well received by the innovation and technology sector (including non-local applicants).

### Local applicants

10. Insofar as the applications filed by local applicants are concerned, 117 applications were filed in the first 15 months. When compared with the annual average of around 280 applications for standard patents filed via the “re-registration” route in the past seven years, the number of OGP applications indicates that the trade responded positively to the new system.

11. About half of the local respondents to the survey were SMEs and about a quarter were start-ups, reflecting that the OGP system is welcomed by local SMEs and start-ups. The OGP system provides a convenient path for applicants to file standard patent applications directly in Hong Kong, and the applicants no longer need to make prior filings of corresponding applications for the same inventions with a designated patent office outside Hong Kong. This not only saves the applicants’ cost and time for filing patent applications, but also helps SMEs and start-ups avoid any difficulties they may encounter when applying for patents outside Hong Kong. For local enterprises with Hong Kong as their major or key target market, the OGP system provides a cost-effective way for them to obtain standard patent protection.

12. In addition, approximately 80% of the applications filed by local applicants were first filings worldwide for the respective inventions. The

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<sup>10</sup> If the responses from the respondent who has submitted 109 OGP applications were not taken into account, the most cited filing strategy in the absence of an OGP system in Hong Kong for other non-local respondents would be “applying for standard patents via the ‘re-registration’ route” (representing 71.4% of the relevant applications from the non-local respondents concerned).

OGP system not only facilitates applicants to file applications directly in Hong Kong for obtaining standard patent protection, but also helps them secure the first or earliest filing dates for the applications so that the applicants can enjoy a right of priority<sup>11</sup> when they file a corresponding patent application for the same invention in any Paris Convention country or World Trade Organization member country or territory within 12 months after the date of filing of the OGP application. As such, the OGP system can be integrated with the mainstream patent systems of the international community to facilitate local applicants to seek patent protection in other countries or regions, and to introduce their products/services to other markets outside Hong Kong.

### Non-local applicants

13. Non-local applicants have filed more OGP applications than local applicants. According to the survey findings, the major reasons cited by non-local applicants for choosing to file OGP applications in Hong Kong were to save time for obtaining a standard patent grant and to seek local patent protection for introducing their products/services to Hong Kong as a target market. This reflects the OGP system is one of the factors attracting non-local enterprises to invest in Hong Kong. It helps promote the development of IP industry in Hong Kong, and assists the development of Hong Kong into a regional IP trading centre, thus encouraging economic growth.

14. Non-local applicants also expressed in the survey their confidence in Hong Kong's OGP system, reflecting their positive perception of the quality of the Hong Kong patent system.

### **Views of the Trade**

15. IPD held two meetings with the representatives of IP practitioners' associations in February this year to collect their views on the operation of the OGP system and the examination work of the Patents Registry. The trade representatives put forward different views on the implementation of the OGP system, including suggestions to simplify the examination procedures of patent applications, and to provide more detailed information in the first examination report to facilitate applicants to respond. Some

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<sup>11</sup> Right of priority means that after an applicant of a patent application for an invention first file in a certain country or region, for the purposes of examining novelty and inventiveness, he/she is entitled to establish a filing date or a material date for a subsequent patent application with the same invention in another country or region within 12 months after the date of filing of the first application.

practitioners also suggested IPD explore co-operation opportunities with other patent offices and expedite the examination of patent applications, etc.

16. IPD has all along been actively exploring ways to refine the mechanism and procedures of the OGP system in order to enhance its user-friendliness. In order to expedite the substantive examination process, IPD launched a pilot arrangement last September to allow an applicant with application entering the stage of substantive examination to confirm with the Patents Registry that no voluntary amendment would be made to the application, so as to shorten the processing time of the application. IPD will study the other views of the trade and take follow up actions as appropriate.

### **Way Forward**

17. We will closely monitor the filing trend of OGP applications to ensure that the examination work of the Patents Registry can meet the demand and cater for the development of specific technological areas. We will continue to actively promote the OGP system to more potential applicants (including the innovation and technology sector, SMEs, start-ups, university technology transfer centres, and scientific research institutions, etc.) through different channels, including conducting promotional activities on appropriate platforms to raise the awareness of the OGP system among the stakeholders and the general public. We will also continue to maintain dialogues with the IP industry to understand their needs and explore enhancements to the examination mechanism and procedures to ensure that the system can facilitate the healthy development of patent registration.

### **Views Sought**

18. Members are invited to note the contents of the paper.

Commerce and Economic Development Bureau  
Intellectual Property Department  
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