

Council Meeting in Chiang Mai, Thailand, October 2012

Report of
THE HONG KONG GROUP OF APAA

by Tim Hancock

A. CHANGES AND DEVELOPMENT IN LEGISLATION

There have been no actual changes in legislation, but there have been significant developments in relation to both Patent and Copyright Law :-

1. PATENT LAW

In my report last year, I referred to the fact that the Hong Kong Government is undertaking a review of the Patent System. Following a preliminary forum held in February 2011, a discussion paper was issued to the Legislative Council Panel On Commerce and Industry by the Intellectual Property Department (IPD). The Hong Kong Group gave preliminary views on the issues raised in that discussion paper, as requested by IPD. A full consultation paper was then issued in October 2011, with papers to be submitted in response by 30 December 2011. The three areas covered by the consultation paper were :-

- (i) Standard Patents – should Hong Kong move to a system of “Original Grant” or continue to rely on re-registration of patents obtained elsewhere? If opting for a system of “Original Grant”, how should the task of examination be dealt with. If continuing to rely on patents obtained elsewhere, should the number of countries relied upon be increased?
- (ii) Short-Term Patents. The current Short-Term Patent System offers protection to inventions with a shorter commercial life with 8 years protection following a clear search report rather than full substantive examination. Applications may be filed in Hong Kong direct. Should that system be retained, modified or removed all together?
- (iii) Linked to the above two issues is the question of whether providers of patent agency / attorney services should be regulated and, if so, how.

The Council of the Hong Kong Group, the Patent Committee and a previously established Patent Review Committee cooperated to produce a substantial document covering the above three areas. The document was eventually filed on 31 December 2011 and ran to some 48 pages.

An Advisory Committee appointed by the Hong Kong Government is chaired by one of the Hong Kong Group members (Andrew Liao S.C.). There are 12 other

members of the Advisory Committee, 3 of whom are also members of our Association (Ewan Bewley, Chris Britton and CK Kwong). That Committee will now review all the various submissions made in response to the consultation paper – a total of 74 submissions made by various organizations and individuals. The Advisory Committee is expected to report by the end of this year. Depending on the recommendations put forward, relevant amending legislation may then need to be prepared.

Before the Government announced the above review of the Patent System, the Hong Kong Group had already established a Patent Review Committee to study and consider the possible formal establishment of a patent profession in Hong Kong. That Committee (chaired by Tim Letters) has continued its work on reviewing systems of training and regulating patent attorneys in Asia and around the world. A substantive report has been prepared and submitted to the Council of the Hong Kong Group. A summary of findings of the Committee was circulated to members of the Hong Kong Group. That report contains invaluable information and thoroughly researched materials comparing various systems around Asia and the world. When the above review of the Hong Kong Patent System has been completed and corresponding amendments to legislation have been proposed, the work of the Patent Review Committee on the establishment and regulation of a separate patent attorneys profession will come back into focus.

2. COPYRIGHT (AMENDMENT) BILL 2011

Amongst other things, this bill sought to introduce a variety of different measures aim at strengthening copyright protection in the digital environment. One aspect proved to be very controversial – proposed criminal sanctions against unauthorized communication of a copyright work to the public. There was a considerable body of opposition to the bill from those that feared an adverse effect on freedom of expression. There was particular concern over potential abuse of the proposed legislation when used against political satire and parody. A significant number of people signed a petition urging the Government to withdraw the bill. More than a thousand amendments were proposed to the bill in a deliberate attempt to delay its passage into law – a clear “filibuster”. As a result of this opposition, the Government decided not proceed with the bill at all, despite the fact that there were several other aspects to the proposed changes in legislation which were far less controversial.

B. NOTABLE CASES

I will leave it to individual committees to report specific cases relevant to their areas, but there have generally been very few leading court decisions this year which have had a significant effect on the Intellectual Property community in Hong Kong.

C. MATTERS OF INTEREST

Peter Cheung, the director of the Intellectual Property Department of the Government of Hong Kong has continued to pursue the initiative he launched last year with a view to establishing Hong Kong as a hub for trading in Intellectual Property. More can be learned by visit www.ipd.gov.hk/eng/ip_trading.htm.

The Council and members of the various APAA Committees in Hong Kong meet with Peter Cheung and other senior members of the Hong Kong IPD every 6 months. At these meetings, IPD provides reports on filing statistics and performance with updates on e-commerce, publicity, public education and recent mainland / Hong Kong cooperation activities. There has also been liaison on amendment to the rules of the High Court (in relation to patent litigation), amendment to the Copyright Ordinance and the Review of the Patent System referred to above. IPD has also discussed possible solutions to delay in deficiency checking and preliminary examination in the Trade Marks Registry.

D. REGISTRATION ACTIVITIES

During the calendar year 2011, the following number of applications were received and registrations granted by the Hong Kong Intellectual Property Department :-

	<u>2011</u>	
	<u>Applications</u>	<u>Registrations</u>
Trade Marks	32,559	24,122
Standard Patents	13,493	5,050
Short Term Patents	615	517
Registered Designs	2,353	4,478

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