

## Council Meeting in Hanoi, Vietnam, October 2013

### Report of THE HONG KONG GROUP OF APAA

by Tim Hancock

#### **A. CHANGES AND DEVELOPMENT IN LEGISLATION**

As reported last year, there have been no actual changes in legislation. However, there have been developments which will almost certainly eventually led to significant changes in Patent and Copyright Law – particularly Patent Law.

##### **1. PATENT LAW**

A thorough review of the Hong Kong Patent Law System has been proposed. It began with a preliminary forum held in February 2011. The Hong Kong Group of APAA has been involved at every stage of this review to date. A full Consultation Paper was issued in October 2011. A total of 74 submissions were made by a wide range of organizations and individuals with an interest in the patent system in Hong Kong (including APAA).

All submissions were considered by an Advisory Committee appointed by the Hong Kong Government. The Committee has 12 members and is chaired a member of the Hong Kong Group of APAA (Andrew Liao SC). There are three other members of the Advisory Committee who are also members of our Association (Ewan Bewley, Chris Britton and our own President CK Kwong). Having considered the submissions and a wide range of related issues, the Advisory Committee issued their report on 7 February 2013. Essentially, that report recommended :-

- (a) Hong Kong should introduce a system of original grant of patents (OGP) initially with substantive examination to be outsourced to other patent offices.
- (b) The current system of re-registration of patents obtained elsewhere is to be retained. That system involves re-registration of patents obtained in UK, Europe (designating UK) and China.
- (c) Hong Kong's current Short-Term Patent System is to be retained, but with several amendments and refinements to that system.
- (d) A full regulatory system is to be developed in relation to those providing patent agency services. Eventually, this would involve the regulation of both the provision of relevant services and control over those entitled to

use relevant professional titles such as “Patent Agent” and “Patent Attorney”. Whilst full regulation is the ultimate goal, consideration was also to be given to possible interim measures.

Having delivered their report and given a clear direction on how they perceive Hong Kong Patent Law will develop in future, the Advisory Committee is now considering the detailed legislation, regulations and various other issues that will be necessary to implement their recommendations. Clearly, with such a wide ranging and comprehensive change to Hong Kong’s Patent System, this will take some time. Meanwhile, the Intellectual Property of the Hong Kong Government (“IPD”) issued a separate Consultation Paper seeking views from the public and interested parties on one particular aspect of the Advisory Committee report – the possibility of introducing transitional measures to regulate the providers of patent agency services and/or regulating the use of professional titles such as “Patent Agent” and “Patent Attorney”. That request from IPD was issued on 20 March 2013 with views to be submitted by 31 May 2013.

It is understood that numerous submissions were made to IPD in response to their request for views on this issue. In due course, they will be made publicly available on the IPD website. Meanwhile, with helpful input from Tim Letters and his Patent Review Committee, detailed submissions were made within time by APAA HK. Essentially, whilst APAA HK supports the introduction of a full regulatory system for patent agency service providers and the regulation of use of relevant professional titles, it was not considered possible to support the introduction of interim measures on regulation. Whilst a superficially attractive idea, there are a multitude of complicated practical and politically sensitive issues which need to be considered in depth and which are not capable of resolution by way of quick-fix interim measures which would be unsupported by legislation and therefore incapable of enforcement.

It is not yet known whether IPD will propose any interim measures or when the Government Advisory Committee is likely to submit more detailed draft legislation, regulations and other detailed proposals necessary to implement their fundamental and wide ranging changes. Naturally, I will continue to keep the Association up to date on developments as and when they occur.

## **2. COPYRIGHT (AMENDMENT) BILL 2011**

This Bill sort to introduce a variety of different measures aimed at strengthening Copyright protection in the digital environment. The proposal to introduce criminal sanctions against unauthorized communication of a copyright work to the public proved unexpectedly controversial. There were fears that this would have an adverse effect on freedom of expression, with particular concern over potential abuse if used to counter political satire and parody. The very public expression of those concerns led to the Government deciding not to proceed

with introduction of the Bill at all, including all the numerous other significantly less controversial issues. It may well be reintroduced in due course. Meanwhile, with a view to addressing public concerns over freedom of expression / satire / parody, the Government issued a Consultation Paper on the issue in July 2013. Submissions are due by 15 October 2013. As at the time of preparing this paper, APAA HK has not yet filed its submissions. However, submissions will be put to the Government on this issue and APAA HK will remain actively involved in this debate.

## **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**

The Council and members of the various APAA Committees in Hong Kong meet with the Director of the Intellectual Property Department (Peter Cheung) and other senior members of IPD every 6 months. At these meetings, APAA HK raises a variety of issues which are of interest to us and our members whilst the IPD provides reports on filing statistics and performance with updates on e-commerce, publicity, public education and a variety of mainland / Hong Kong cooperation activities. Discussions have continued on the IPD plan to establish Hong Kong as an internationally recognized hub for the trading of Intellectual Property rights. IPD have also introduced a new initiative with a view to promoting more use of the ability to register fragrances as trade marks in Hong Kong. At the request of IPD, several members of the Hong Kong Group of APAA have attended seminars, conferences and other events organized and promoted by IPD in Hong Kong / Guangdong / Macau. We have also assisted IPD in identifying speakers to address a variety of topics at those seminars. We also lent support to the second "Business of IP Asia Forum" organized by the Hong Kong Trade Development Council in December 2012, and will be doing the same at the third Forum being arranged for this coming December 2013.

## **D. REGISTRATION ACTIVITIES**

During the calendar year 2013, the following number of applications were received and registrations granted by the Hong Kong Intellectual Property Department :-

	<b><u>2012</u></b>	
	<b><u>Applications</u></b>	<b><u>Registrations</u></b>
Trade Marks	35,530	26,383
Standard Patents	12,988	5,035

Short Term Patents	645	515
Registered Designs	5,206	4,549

#### **E. ANNIVERSARY**

In 2014, the Hong Kong Group of APAA will be celebrating its 40<sup>th</sup> Anniversary. A suitable celebration is being planned. It is likely that celebration will be timed to coincide with the launch of a new initiative to provide a wide range of education opportunities for those seeking to improve their knowledge of Intellectual Property matters. There will be particular emphasis on patent related issues in light of the significant changes in this area following the above Government review. The decision (in particular) to introduce a system of original grant of patents in Hong Kong. The Council of the Hong Kong Group has long wished to do more in relation to education of its members and others. In previous years, it has been unclear how and where to focus efforts in relation to education. The recent announcements by the Government on where patent law is now heading have now provided us the direction we need. Work on this will now proceed in earnest. An “Education Task Force” is being established and a series of educational events is being considered in coordination with our proposed anniversary celebrations. All educational efforts will also bear in mind efforts being made in the wider APAA community in relation to establishment and launch of the APAA Academy.

Tim Hancock  
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