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Dear Sirs,

The Asia Pacific Intellectual Capital Centre (APICC) is a not-for-profit company registered in Hong Kong. APICC has been promoting policies and practices relating to the subject of the Knowledge Economy in HKSAR and in mainland China since 2006. We have published whitepapers relating to: *“Hong Kong’s Innovation and Technology Role in China’s 12th Five Year Plan”* and *“Policies and Practices for Hong Kong as a Knowledge Economy and the Proposed Innovation and Technology Bureau”* (see www.apicc.asia).

The main issue we have on the consultation document is that the granting of Hong Kong Original Grant Patent (OGP) that is also valid in mainland China was not considered in the consultation paper at all. A robust OGP system is one of the key business conditions that we need if our ambition is to become a world class Knowledge Economy. Such a system is a foundation business condition to the “IP and Technology Transfer”, “Open Innovation” and “Commercialisation” capacities which Hong Kong need to develop in the next five to ten years. In our view, the approach of granting Hong Kong originated patent that is not valid in mainland China does not meet the requirement as stated in the 2011-2012 Policy Agenda (Page 6): *“... we will review the Patent System to ensure that it continues to meet present-day circumstances and is commensurate with our efforts to develop Hong Kong into a regional innovation and technology hub”*.

The subject of granting Hong Kong originated patent that is also valid in mainland China, as I recalled, was the common understanding and was discussed at meeting between SIPO (State Intellectual Property Office) and a delegation led by Hon. Samson Tam (Legco member) and Mr. Stephen Selby (former IPD Director) in Beijing on 8th September 2010. Other subjects discussed during the meeting with SIPO included: China’s cooperation with Korea, Japan, USA, WIPO, EPO

and Taiwan, particularly in the area of building capacity to share patent data (explained by SIPO); concern on the Hong Kong economic development structure, particularly in the context of how to move towards adding high-value added industries in the post financial crisis era (as expressed by SIPO); the possibility of Hong Kong to examine and grant patent; Hong Kong to become an IP Trading and Technology Transfer Platform and Hong Kong to host Intellectual Capital Management initiatives that support technology transfer in Hong Kong and mainland China (as discussed during the meeting).

As we understand it through various discussions, HKSAR and China could mutually recognize the substantial examined patents through a mutual agreement between two patent regimes or through CEPA. From the meeting at SIPO on 8th September 2010, we believe that such a proposal would be supported by the SIPO and we hope that the HKSARG would consider and move towards this direction seriously.

With regard to the other points raised in the consultation document:

Standard Patents

- a) An OGP should be granted in Hong Kong, assuming that the Hong Kong grant patent will also be recognized in mainland China at the same time.
- b) Registration should be expanded to recognise the patents recognized by other jurisdictions.

Short-term Patents

- c) Too many types of patents could cause confusion; discontinuation is an option.
- d) If a short-term patent (without substantial examination) were to be maintained, the registration system could be outsourced to the professional or trade associations; this way, the IPD could focus on building up the capacity and work processes relating to fully-examined patents.

Regulation of Patent Agency Services

- e) We support the regulation of patent agents; however, the right to grant licenses should NOT be given exclusively to a single professional or trade association; instead a minimum of four to five trade and professional bodies should be given the right to do so to ensure that a fair, open and cost-effective licensing system is maintained.

We hope that our views have been useful.

Sincerely yours,

Alan Lung
Director & General Manager
Asia Pacific Intellectual Capital Centre