

To whom it may concern,

As a Hong Kong resident, solicitor and engineer, I am very glad to find that the HKSAR Government has the vision to improve the Hong Kong patent system and industry.

OGP

In November 2006, I was invited to speak at an intellectual property conference held by the American Chamber of Commerce in Hong Kong. During the conference, I proposed that Hong Kong should have an OGP system. However, Mr. Stephen Selby, former director of HKIPD, immediately rebutted my suggestion and stated that the number of technology innovations in Hong Kong did not warrant an OGP system. It is encouraging to see that the HKSAR Government has now adopted a much more open-minded approach.

The current re-registration system works fine if the HKSAR Government is willing to give up its judicial power to treat itself as a colonial state of a foreign country, just another city of PRC or on par with other developing countries. On the other hand, the HKSAR Government should have an OGP immediately. Processes in relation to examination, invalidation and other procedural matters can be outsourced to local Hong Kong private entities, public organizations, SIPO, or foreign patent offices if HKSAR Government is concerned with cost and speed.

Short-term Patent

The pros and cons have been clearly cited in the Consultation Paper and debated in the public forums held. I prefer to maintain the current status-quo simply because it is a relative low-cost tool to establish priority-date.

Regulation of Patent Professional Services

As an in-house patent counsel of a networking equipment company, a former associate at a major law firm, and a former senior intellectual property manager at ASTRI, I have the privilege to work with many major patent agencies in Hong Kong, a few foreign patent law firms and a few foreign patent agents. The services I have received from the major patent agencies in Hong Kong are on par with the services I have received from overseas. However, many corporate managers, entrepreneurs and inventors have been complaining to me about the difficulty to choose a proper patent agent or a patent lawyer because it is difficult to find an individual that has the ability to understand technology and draft a patent (in Chinese and in English) at the same time.

When I was in ASTRI, my former colleagues and I developed a tender process to pre-select patent service agencies in Hong Kong, China and overseas and an internal process to determine which patent agent / patent lawyer to use when there was a need to file a patent application. ASTRI has been improving the processes since my departure. I encourage others in Hong Kong to develop their in-house procedure to select patent professional service provider.

Unfortunately, not many corporations or individuals have the patent volume similar to ASTRI to attract the attention of major patent professional service providers in Hong Kong. In order to assist the selection of patent professional service providers, I believe a qualification system is required.

Many have already expressed their views how such qualification system should evolve. I have only four simple requests for the development of the qualification system.

1. Proper technical education – without a passion in technology, a patent agent / patent lawyer cannot provide high quality patent service to patent applicants and inventors. Passion in technology is the best reflected by the drive to receive a proper technical education. Therefore, proper technical education should be mandatory for a patent agent / patent lawyer. However, it does not matter whether the technical education is earned from IVE or a university as long as the technical education requirement is recognized by the HKSAR Government. There is no need, actually it is unfair to patent applicants and inventors, to establish another regime just to qualify the technical education of a patent agent / patent lawyer.
2. Proper training of patent procedures – like many different branches of law and professions, a patent agent / patent lawyer should know Hong Kong patent law by heart. Otherwise not only patent applicants and inventors may lose protection to their inventions, the patent agents / patent lawyers are liable for negligence. Therefore formal procedural training, such as apprentice, course or examination, in relation to Hong Kong patent law and regulations should be mandatory.
3. Reciprocal recognition – if the HKSAR Government is going to recognize patent professional qualifications from overseas governments or bodies, those overseas governments or bodies should also recognize the future Hong Kong patent professional qualification. Otherwise, it is unfair to Hong Kong people and should be considered as subrogation to foreign influences.
4. Use of title – there should be a regulatory regime to control the use of “patent lawyer”, “patent attorney” and “patent agent”. Otherwise, the users of patent professional services are likely to be confused by the titles.

Conclusion

It is encouraging to see the HKSAR Government has jumped out its self-imposed boundaries to initiate this consultation. No matter what the consultation will end up with, competent patent counsels or patent managers will find one way or another to improve patent quality, expand protection scope and drive down patent cost for their in-house inventions. It is the local Hong Kong companies and inventors, who have less resources and patent experience, will be suffered if the HKSAR Government cannot take the leadership role to improve the patent application subsidy, patent system and industry in Hong Kong.

Yours faithfully,

Kenneth Yip