

**For discussion
on 21 May 2013**

Legislative Council Panel on Commerce and Industry

Fostering the development of Intellectual Property trading in Hong Kong

Purpose

This paper briefs members on the development of intellectual property (IP) trading in Hong Kong, and the formation of the Working Group on IP trading as a dedicated initiative on this front.

Background

Components of IP trading

2. IP trading generally refers to the buying, selling and transferring of IP rights, such as patents, copyright works, industrial designs, trademarks, semi-conductor layout-designs, or even trade secrets and plant varieties.

3. The ecosystem of each type of IP rights, however, may be very different as different players and practices are involved. IP trading may also take different forms, such as acquisition, licensing, franchising etc.¹

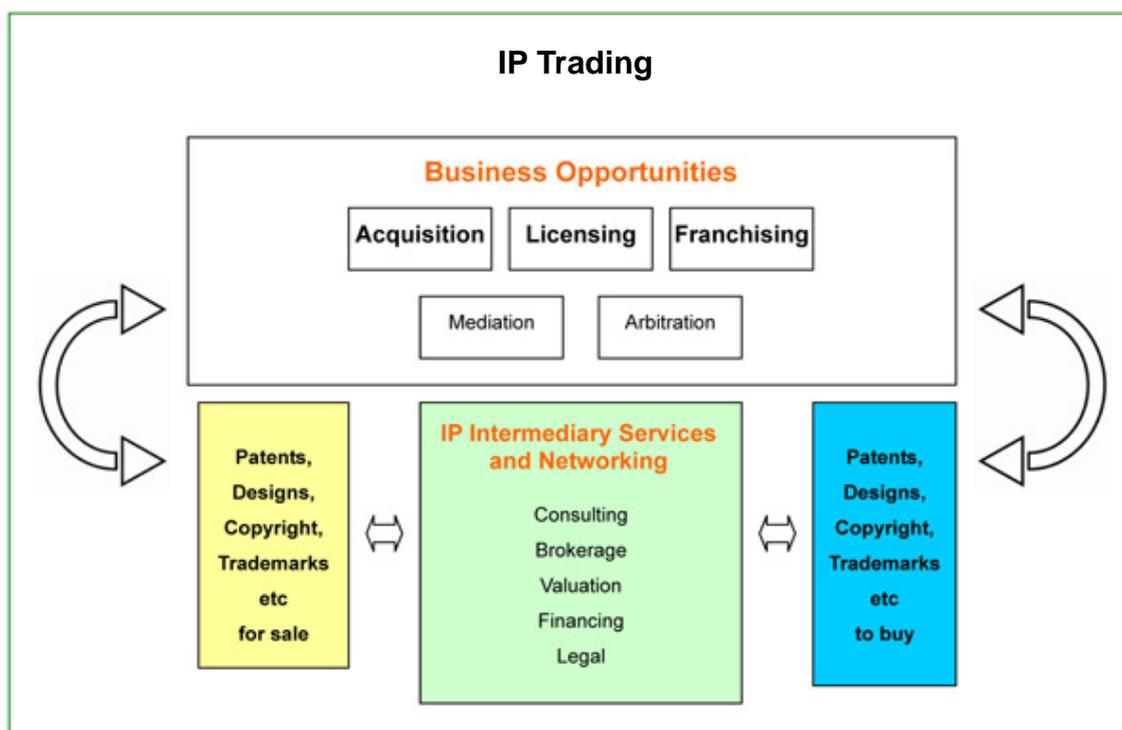
4. IP trading may simply take place between IP owners and IP users direct. But more often it may cover (1) IP rights to sell, (2) IP rights to buy and (3) the kind of supporting services that IP intermediaries can provide. A sophisticated version may involve a network model which

¹ Examples of international IP trading may include the sale and purchase (e.g. through assignment or licensing) of -

- an inventive energy-saving technology patent protected in the target foreign market for manufacturing or processing;
- an avant-garde furniture design protected in the target foreign market for production or distribution;
- an original layout-design of integrated circuit, protected in the target foreign market for production or distribution;
- an original copyright film screenplay for adaptation and exploitation in the target foreign market; and
- a distinctive trademark for use in a wide range of fashion and accessories, protected in the target foreign market.

permits many-to-many relationships in the IP trading context, as illustrated in the following figure.

Figure 1 IP Trading Model



Statistics and observations on world trend

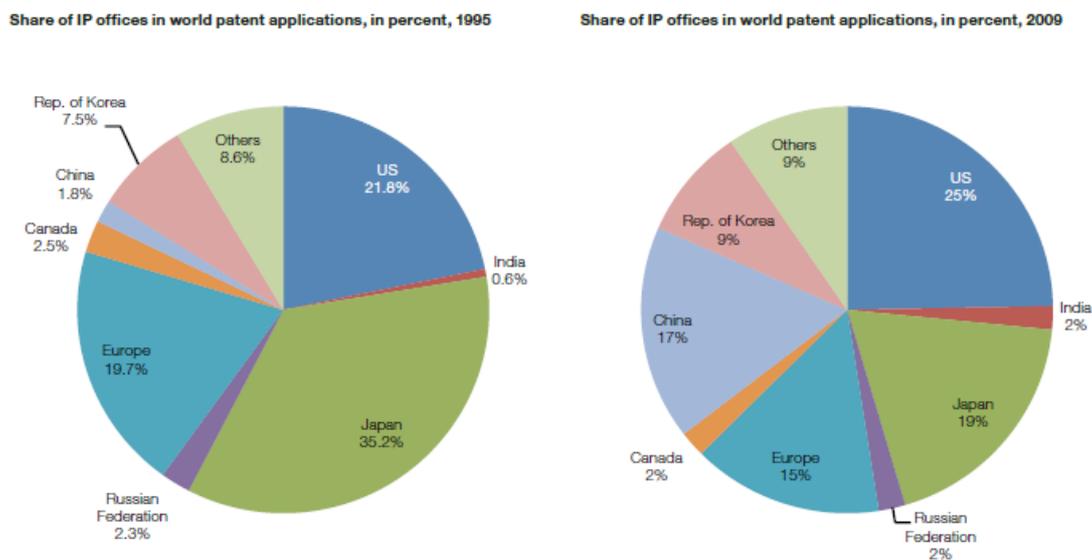
5. In the globalised economy today, innovation is the driver for economic growth and development. Firms and economies are competing on the strength of open innovation.

6. The globalised innovative process has set a sea change to the world IP landscape.² The first manifestation is the intensified use of the IP system to unprecedented levels over the last two decades. According to the World Intellectual Property Organization (WIPO), world demand for patents has risen from 800 000 applications in the early 1980s to 2 million in 2010. Trademark applications worldwide jumped from 1 million a year in the mid-1980s to 3.6 million in 2010.

² See generally "The Changing Face of Innovation", World Intellectual Property Organization's World Intellectual Property Report 2011.

7. Another sign is the change in geographic balance in the demands for IP rights. From 1995 to 2009, the share of global patent applications from the United States, Europe and Japan altogether has dropped from 77% to 59%, while China's share alone has grown from a meagre 1.8% to 17%. During the same period, China's share of trademark applications worldwide rose from less than 10% to over 25%, at the expense of advanced economies.

Figure 2 Patent applications shift towards Asian countries



Source: WIPO Statistics Database, September 2011.

8. A third observation is the increased tradability of IP across borders. Take international royalty and licensing fees as an example. The receipts increased, in nominal terms, from US\$ 2.8 billion in 1970 to some US\$ 180 billion in 2009. IP intermediaries such as IP brokerages, auctions, clearinghouses and exchange are emerging to support cross-border IP trading and add value to the transactions (especially exploitation of certain types of IP whose value might have otherwise remained untapped), some taking advantage of novel information and communications technologies and business models for matching IP buyers and sellers and monetising IP rights.

Development of IP Trading in Hong Kong

Hong Kong as an IP trading hub

9. In Hong Kong, significant IP trading activities driven by the market are already taking place. As a regional platform for technology transfer, Hong Kong exported US\$1.1 billion in technology to Mainland China in 2010. That put Hong Kong the sixth in the world in taking technology to the Mainland³.

10. According to figures of the Census and Statistics Department, the exports and imports of services classified as the use of IP⁴ by service component in 2009-11 are as follows :

Exports of services			Imports of services		
Year	HK\$ million	As a % of all services	Year	HK\$ million	As a % of all services
2009	2,972	0.6	2009	13,176	2.8
2010	3,110	0.5	2010	15,367	2.8
2011	3,575	0.5	2011	15,640	2.7

11. Many companies are already providing various IP intermediary services in Hong Kong. Recently there are also private sector initiatives in setting up a few online IP trading platforms based in Hong Kong to offer trading and matching services.

12. Innovation and technology is a key driver of economic growth in Hong Kong. Over the years, the Government has been providing both hardware and software support to foster innovation and technology development and to create synergies among the Government, academia, and the research and industrial sectors. Apart from IP creation, commercialisation and exploitation of IP, whether indigenously generated or otherwise, is an important part of the quest. More recently, we have also set out to lead, champion and drive the development of the creative economy in Hong Kong, with various institutional and public funding

³ Information from the Ministry of Commerce.

⁴ Charges for the use of IP include franchise and trademark licensing fees, and charges for the use of other IP rights (e.g. periodic receipts/payments on authorised use of patents, copyrights and other non-financial proprietary rights).

support for the creative industries. It is important to turn the IP contents created into economic benefits.

Our advantages

13. As a metropolis and an international financial centre with the Mainland as the hinterland, Hong Kong casts itself as the business, trading and services hub for the Mainland and the region as a whole, and functions as a springboard for foreign investors seeking to tap the Mainland market.

14. In addition, Hong Kong has a long tradition of upholding the rule of law, a sound IP rights protection system, a simple and low tax regime, as well as a pool of bi-literate and tri-lingual professionals with Mainland and international perspectives. Given also Hong Kong's experience in areas such as research and development (R&D), design, trading and business services in support of industrial production, Hong Kong has the potential to develop into a regional IP trading hub.

Potential Benefits of IP Trading

15. IP has become increasingly important in a knowledge-based economy. Hong Kong excels in trading and related services, and the strategic positioning of Hong Kong as the gateway to China provides lots of opportunities in IP trading, which in turn would contribute to the upgrading of our economy, and create jobs in various high end business sectors.

16. IP trading can enhance our local R&D capacity and facilitate technology transfer. It can complement the efforts of Hong Kong to become an innovation and technology hub. Likewise, IP trading may help us drive the development of the creative economy by making the most of the creative contents in the commercial world.

17. Hong Kong businesses, including SMEs, may grasp the opportunities presented by IP trading to increase their competitiveness by branding and upgrading. Intangible IP assets can be as valuable as tangible assets, and businesses may look for innovative ways to build, manage, value and leverage them strategically to drive growth.

18. IP trading creates an increasing need of high value-added intermediary services, such as IP agency, IP management and consulting,

legal, arbitration, accounting, valuation, financing and insurance services, boosting the development of these sectors.

19. The growing demand for IP talents may create career openings for our younger generation as well as foster the development of local training and education providers.

The Working Group on IP Trading

20. As mentioned by the Chief Executive in his Policy Address 2013, a Working Group on IP trading was set up to advise on the overall strategies to promote the development of Hong Kong as an IP trading hub, and to identify policy and other support measures to facilitate IP trading in Hong Kong. The Working Group, led by the Secretary for Commerce and Economic Development, comprise Government representatives, industry stakeholders and experts from different fields.

A and B 21. The Working Group was set up in March 2013. Its terms of reference and membership list are at Annex A and Annex B respectively.

22. At its first meeting held in April 2013, four preliminary strategic areas were identified which may possibly be covered in a strategy to promote the development of Hong Kong as an IP trading hub, namely –

(I) Enhancing the IP protection regime

23. A robust IP protection regime can encourage innovation, technology development and creativity. This is a prerequisite to any aspiration or credible bid to promote IP trading in the competitive environment of the global economy.

(II) Supporting IP creation and exploitation

24. Support to the R&D sector, creative industries and IP users can encourage the creation and exploitation of IP and stimulate the development of IP trading. In turn, enhanced trading of IP may lead to more creation and exploitation of IP through, for example, acquisition of background or upstream IP from untapped stock outside for indigenous downstream R&D and product development.

(III) Fostering IP intermediary services and manpower capacity

25. IP intermediaries fill the information gap between the supply and demand, and provide professional supporting services to facilitate IP trading. Presence of high quality IP intermediary services therefore would be essential to provide a clustering effect for the development of an IP trading hub. IP intermediaries include –

- (i) IP matching services – e.g. IP exchange platforms;
- (ii) legal services;
- (iii) arbitration and mediation;
- (iv) IP agency services;
- (v) IP valuation;
- (vi) IP insurance;
- (vii) IP financing;
- (viii) IP management and consultants; and
- (ix) other ancillary services.

26. Given the diverse and professional expertise involved as set out above, attracting and training talents for IP intermediary services to create a clustering effect is very important to promote IP trading.

(IV) Promotion, education and external collaboration

27. Although Hong Kong has long been involved in various forms of IP trading activities, it is important to “brand” Hong Kong as a regional IP trading hub to educate and focus the market players both internally and externally on the benefits and opportunities offered by Hong Kong in this area, as well as to enhance the status of Hong Kong as an IP trading centre. Our efforts should cover –

- (a) Promotion and education on the concept of IP trading and management to local enterprises and the public.

- (b) Promotion of Hong Kong as an IP trading hub to attract overseas/Mainland IP owners and users, as well as intermediaries.
- (c) Co-operation with Mainland and overseas IP authorities and international IP organisations (e.g. WIPO).

Current efforts and way forward

C 28. The Working Group noted that there are already concrete Government policies and programmes to support the development of strategic areas (I) and (II) that provides the right environment for IP trading to take root. Areas (III) and (IV) are relatively new but various efforts are being pursued and further developed. A summary of the current endeavours is at Annex C. In its future deliberations, the Working Group would focus discussions on identifying the right strategy to pursue and appropriate measures in support.

29. In the longer term, the Working Group may consider weaving a common thread across the strategic areas and setting out an overarching vision of building up the necessary clusters conducive to the overall development of Hong Kong as a knowledge-based economy that spearheads exploitation and commercialisation of IP and supports enterprises to make the most of IP as a core business asset that should be built, managed, valued and leveraged strategically to drive innovation and growth.

Advice Sought

30. Members are invited to note the above account and give views on fostering the development of IP trading in Hong Kong.

Commerce and Economic Development Bureau
Commerce, Industry and Tourism Branch
May 2013

Terms of Reference of the Working Group on IP Trading

- (a) To advise on the overall strategies to promote the development of Hong Kong as an intellectual property trading hub; and
- (b) To identify possible policy and other support measures to facilitate intellectual property trading in Hong Kong.

Membership List of the Working Group on IP Trading

Chairman

Secretary for Commerce and Economic Development

Vice-chairman

The Hon Andrew LIAO Cheung-sing, GBS, SC, JP

Members

Mr. Nicholas Charles BROOKE, SBS, JP

Ms. Agnes CHAN Sui-kuen

Dr. Jackson CHAN Chik-sum

Dr. Toby CHAN Lap-man

Professor Paul CHEUNG Ying-sheung

Professor Raymond CHOY Hon-sing

Ms. Yvonne CHUA

Dr. Roy CHUNG Chi-ping, BBS, JP

Mr. KWONG Chi-keung, JP

Mr. Alfred KWOK Chan-fai

Mr. Anson KWOK

Mr. Ronald LAI Chi-shing

Dr. Terence LAU Lok-ting

Mr. Jong LEE

Mr. Sunny LEE Wai-kwong, JP

Dr. Lewis LUK Tei, JP

Mr. WONG Ming-yam, BBS, JP

Dr. WU Po-chi

Director of Intellectual Property (or representative)

Commissioner for Innovation and Technology (or representative)

Head of Create Hong Kong (or representative)

Executive Director, Hong Kong Trade Development Council (or representative)

**Fostering the development of IP Trading in Hong Kong
Current efforts in the four preliminary strategic areas**

(I) Enhancing the IP protection regime

The Government reviews and updates our IP protection regime regularly to ensure that it is on par with international standards. Hong Kong, in its own right or as part of China, is a party to major international IP treaties such as the Agreement on Trade-Related Aspects of Intellectual Property (TRIPs) of the World Trade Organization (WTO). Initiatives underway include the following –

- (a) On patent, the Government commenced a review on the patent system in Hong Kong in 2011, and taking into account the recommendations of the Advisory Committee on Review of the Patent System in Hong Kong (the Advisory Committee), decided to develop an “original grant” patent (OGP) system in Hong Kong in parallel with the existing re-registration system.
- (b) We are working on a detailed implementation plan in consultation with the Advisory Committee. The OGP system will form part of the infrastructure which will help Hong Kong achieve its vision of becoming a world class innovation and technology hub, and to keep up with the patent systems of other developed or developing economies.
- (c) On copyright, an exercise is underway to update the regime in the digital environment. We are working to engage different sectors to address issues of concern, including “parody” and the related copyright issues.

(II) Supporting IP creation and exploitation

Innovation and Technology

2. Significant investments have been made by the Government in

many policy initiatives since 1999 to promote Hong Kong as a preeminent innovation and technology centre, notably –

- (a) setting up the Innovation and Technology Fund (ITF) with an injection of \$5 billion. A Patent Application Grant scheme has been set up under ITF to provide funding support of \$150,000 per application to first-time patent seekers for patent registrations;
- (b) establishing the Innovation and Technology Commission (ITC) and the Hong Kong Applied Science and Technology Research Institute (ASTRI);
- (c) developing the Hong Kong Science Park and Cyberport as essential infrastructure;
- (d) setting up five R&D centres in five focus areas¹ to drive and co-ordinate applied R&D; and
- (e) launching the R&D Cash Rebate Scheme in April 2010 to provide 30% cash rebate on companies' investment in ITF-funded projects or R&D projects conducted with designated local public research institutions.

3. One latest initiative announced in the Budget 2013-14 is to provide six universities each with a subvention of up to \$12 million through the ITF for a period of three years from 2013-14 onwards to support the work of their technology transfer offices.

Creative Industries

4. The Government has also been supporting the development of creative industries in Hong Kong through –

- (a) setting up the Film Development Fund with an injection of

¹ Namely (i) automotive parts and accessory systems, (ii) information and communications technologies, (iii) logistics and supply chain management enabling technologies, (iv) nanotechnology and advanced materials, and (v) textiles and clothing.

\$300 million in 2007;

- (b) establishing the Create Hong Kong in 2009 as an office dedicated to promoting the development of creative industries in Hong Kong; and
- (c) setting up the \$300 million CreateSmart Initiative (CSI) in 2009 (with a further injection of \$300 million as announced in the 2013 Policy Address).

Tax Incentives

5. Over the years, concessions have been provided in our tax system to promote the use of IP –

- (a) An enterprise's revenue expenditure for the use of IP (e.g. royalties, licence fees and other forms of regular payments), like its other revenue expenditure, is deductible for profits tax purpose.
- (b) Tax deductions have been provided for qualifying R&D expenditure incurred by enterprises, as well as the registration expenditure incurred in Hong Kong or overseas on patents, trade marks and designs.
- (c) To encourage the wider use of IP rights, since the year of assessment commencing on 1 April 2011, tax deduction has been extended to more IP rights (i.e. copyrights, registered designs and registered trade marks in addition to patents and rights to any know-how) with respect to capital expenditure incurred in the acquisition of these IP rights.

6. Comprehensive Avoidance of Double Taxation Agreements (CDTAs), which provide certainty on taxation of cross-border activities and relief for double taxation, may help reducing the costs of IP trading between Hong Kong and overseas companies. The Administration is committed to establishing a network of CDTAs with our major trading and investment partners. We have by now signed 29 CDTAs with other

jurisdictions. Among the top 20 trading partners of Hong Kong, we have already signed CDTAs with 11 of them. We will continue our efforts to further expand Hong Kong's CDTA network.

(III) Fostering IP intermediary services and manpower capacity

7. Generally speaking, market forces play a principal role in the development of these intermediary services as part of the overall business environment, under appropriate regulatory or facilitating regimes in line with public policy. A few support initiatives in the public sector may be worth mentioning in relation to IP trading –

- (a) The Government have been promoting Hong Kong as an arbitration and mediation centre. The Hong Kong International Arbitration Centre currently provides services to various disputes, including on IP matters.
- (b) As a result of the patent review, the future implementation of the OGP system as well as the accompanying regulation of the patent agency services in phases will help nurture the further development of patent professionals in Hong Kong.

(IV) Promotion, education and external collaboration

8. The Intellectual Property Department (IPD) and the Hong Kong Trade Development Council (HKTDC) have been promoting the concept of IP trading to companies, including small and medium enterprises (SMEs). HKTDC also promote the concept of IP trading in its annual Business of IP Asia Forum², as well as various trade fairs. The Economic and Trade Offices and Mainland Offices of the HKSAR Government and Invest Hong Kong also assist in the overseas and Mainland promotion.

² The BIP Asia Forum was jointly organised by the HKTDC and the Hong Kong Design Centre. The second BIP Asia Forum held in December 2012 attracted more than 1 400 IP professionals and government officials from 23 countries and regions, or twice as many participants as in the inaugural forum in 2011.