Commissioned by Intellectual Property Department of HKSAR and Intellectual Property Office of Guangdong Province

Research Report on Intellectual Property Professional Support Services in Guangdong and Hong Kong

(Abstract)


December, 2004 Guangzhou
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Forward

Nowadays the world economic development is characterized by the increasing role of knowledge and the information globalization. In the time when knowledge-based economy is taking shape, problems concerning intellectual property have increased dramatically and thus promoted the rapid development of intellectual property professional support services (referred to as IPPSS in the following part). Against the background of economic globalization which promotes more regional economic integration, the Closer Economic Partnership Arrangement between the Mainland and Hong Kong (CEPA) was carried out on January 1st, 2004. Leading the economic integration of the Mainland and Hong Kong into a new historical stage and equipping the pan-Pearl River delta regional cooperation with more opportunities, it will trigger an all-round cooperation in all economic sectors including service industry between Guangdong and Hong Kong. In this case, a great opportunity has been created for the cooperation in IPPSS between the two areas.

Under this circumstance, the Intellectual Property Department of Hong Kong SAR and the Intellectual Property Office of Guangdong Province reached a consensus to strengthen cooperation in IPPSS. But within the framework of “One Country, Two Systems” the HK-Guangdong IPPSS cooperation has its unique characteristics. According to Articles 139 and 140 of the Basic Law of Hong Kong SAR, Hong Kong SAR should on its own develop appropriate policies and afford legal protection for scientific research results, patents and inventions, and for the works and legal rights of writers and artists. Thus, in order to make a good plan, the Intellectual Property Department of HKSAR and the Intellectual Property Office of Guangdong Province commissioned the Intellectual Property School of Jinan University to find out the current situation and the characteristics of the IPPSS in the two areas and to collect opinions from service providers and demanders from both areas.
After the Intellectual Property School of Jinan University accepted the commission, an IPPSS research group was immediately formed with Professor Xuxuan, vice dean of the School, as the group leader, and Huang Naiwen, Shen Minghao and Wei Jingyi from Jinan University and Yuan Youlou and Wang Hu from Intellectual Property Office of Guangdong Province as its main members. Besides, Peng Yuyong and all MA candidates from the Intellectual Property School of Jinan University have done a lot of work in questionnaire research and Lu Liangwen in statistic analysis. With the help of the Intellectual Property Department of Hong Kong SAR and the Intellectual Property Office of Guangdong, the group conducted questionnaire surveys in both Hong Kong and Guangdong, and interviewed more than twenty enterprises (including both service providers and demanders) and industry associations in the two regions respectively. After data analysis and repeated discussion, Huang Naiwen wrote a report on behalf of the whole group and this article is its abstract. What need to be explained is that this report depends on the independent research of the research group of Jinan University, and doesn’t represent any official view points. Although the report is based on a great amount of hard research, it may still have room for perfection. Any suggestion is welcome.

IPPSS research Group,

Intellectual Property School of Jinan University

December, 2004
I. Current Situation, Characteristics and Challenges of HK’s Intellectual Property Professional Support Services (IPPSS)

1. Composition of IPPSS system in HK

(1) IP Laws in HK

Intellectual Property laws, as part of HK’s legal system, serve as the systematic foundation of the IPPSS in Hong Kong. At present, the laws cover all IP areas, including: Trade Marks Ordinance and Rules, Patents Ordinance and Rules, Registered Designs Ordinance and Rules, Copyright Ordinances, Trade Descriptions Ordinance, Lay-out Design (Topography) of Integrated Circuits Ordinance, Plant Variation Protection Ordinance, etc.

(2) IP administrative and law-enforcing organizations in HK

The Intellectual Property Department of Hong Kong SAR is responsible for advising the Secretary for Commerce, Industry and Technology on policies and legislation to protect intellectual property in Hong Kong; for operating the Hong Kong SAR's trade marks, patents, registered designs and copyright licensing bodies registries, and for promoting intellectual property protection through public education. The Hong Kong Customs and Excise Department is responsible for taking criminal sanctions against copyright and trademark infringements in Hong Kong. It focuses the enforcement efforts on investigating and fighting piracy at the import and export, manufacturing, wholesale and distribution levels; it also conducts investigation on Internet -piracy activities. There is around 400 staff in this department in charge of IP infringements.

(3) IP agencies in HK
IP Agencies, mostly law firms and offices, are the main body of IPPSS. They provide services in counseling, value evaluation, strategic design, IP infringement investigation, recourse, registration, infringement litigation, etc. According to the research, IP agencies in HK, the free harbor and the bridge between the east and west, practise mainly in IP registrations and prosecutions in Hong Kong as well as in the representation of the HK and overseas companies in their IP rights in Mainland China.

(4) Industry associations

The industry associations closely related to IP in Hong Kong include: the associations of IP service providers, such as some associations of lawyers, trade mark practitioners and patent agents; the associations of IP service demanders; and the associations of arbitration. Among them, the relatively more professional and influential ones are Asian Patent Attorneys Association Hong Kong Group (APAA, with more than 100 members in HK), The Hong Kong Institute of Trade Mark Practitioners, Law Society of Hong Kong, Federation of Hong Kong Industries, etc.

(5) IP education and training institutions in HK

At the first and secondary educational level, IP education, in the form of lectures and social activities, is aimed at arousing IP awareness among primary and middle school students. At the tertiary educational level, law courses concerning IP are offered in some universities such as Hong Kong University and City University of Hong Kong to cultivate students’ professional IP knowledge and to provide qualified personnel for HK’s IPPSS. Short-term trainings and IP popularizations are mainly organized by industry associations and government bodies.

2. Development of IPPSS in HK

(1) Stable increase in IP applications and registrations in HK
In recent years, the number of applications of trademarks, patents and designs remain stable while the registrations have shown a relatively rapid increase. For example, the number of registered trademarks increased 14.2% in 2002 and 25.4% in 2003; the registration volume in other IP areas has also gone up at a double-digit rate.

(2) Application of electronic systems and Internet

The Intellectual Property Department of Hong Kong SAR has established an on-line service system to enable users to get the latest information, search for trademark, patent and design records and submit trademark, patent and design forms. The department sets out quality and fast service standards to limit the time of examining 70% of the trademark applications within 60 days and the time of processing standard patent, short-term patent and design applications within 15 days.

(3) Agencies’ Proper division of work and their business expansion in Mainland

Concerning business composition, in multiple-business law firms, IP business usually takes up around 15% of their total business. On client mix, big comprehensive law firms (with hundreds of employees) provide services mainly for big clients while small law firms mainly for small and medium-sized enterprises. Many agencies have opened offices in Mainland China or have established partnership with their Mainland counterparts. With the implementation of CEPA and the further opening of the service sector in the Mainland, most of the agencies expressed their intension in strengthening cooperation with agencies in the Mainland. Though at present Beijing and Shanghai hosted most of the cooperation, Guangzhou will be the next city to attract more cooperation.

(4) Intensified infringement-combating efforts and greater public awareness

Since Hong Kong Customs and Exercise Department established special task forces to crack down on the outlets selling pirate optical disks, the number of the outlets has reduced by a large margin. For this, Hong Kong Customs was awarded the “Global Anticounterfeiting Award” at the Tenth Authentication & Counterfeiting Protection Conference. Besides, Hong Kong SAR was granted the “Cyber Champion Award” by the United States-based Business Software Alliance for its brilliant work in combating illegal
usage of software. According to the survey on public IP awareness conducted by the Intellectual Property Department of HKSAR in 2003, 92.2% of the interviewees agreed on the necessity of IP protection and half of them said that they did not buy any pirates and fakes. HK’s enterprises have also shown a strong determination to safeguard their IP rights and to crack down on fake products. For example, according to the research interviews conducted by the Jinan University, a kitchenware manufacturer had invested eight million Hong Kong dollars in this regard and achieved good results.

3. Major characteristics of and challenges for IPPSS in HK

(1) Compared to that in the Mainland, IPPSS in HK are featured by a different law system and a higher internationalized level.

Belonging to different law systems—Hong Kong the Anglo-American legal system while Mainland China the continental legal system, the two show great differences in IP laws. Then, Hong Kong has an advantage in its bilingualism of Chinese and English. Besides, Hong Kong’s status as a bridge between the Mainland and the outside world provides the IPPSS in HK great opportunities to help foreign investors investing in Mainland China.

(2) New challenges for HK’s IPPSS from technological development, changing regional role and human resources

Firstly, with the development of digital and network technology, copying digital sources becomes penniless and the recourse gets more difficult. Secondly, with the opening of the Mainland, Hong Kong’s role as a bridge linking China with other parts of the world has changed from a single intermediary to a body directly engaged in business in the Mainland. Lastly, as for human resources, high-quality patent attorneys are so insufficient that many agent organizations expressed their strong desire for such professional personnel.
II. Current Situation, Advantages and Disadvantages of IPPSS in Guangdong

1. Composition of IPPSS system in Guangdong

(1) IP laws and regulations implemented in Guangdong


(2) IP administrative organizations and law-enforcing bodies in Guangdong

The IP working conference mechanism, chaired by provincial leaders and composed of twenty-two departments, has the greatest planning and coordinating power in Guangdong. Within this mechanism, regular conferences are organized annually and provisional meetings held according to actual needs. The mechanism has also been adopted by nine cities such as Guangzhou, Shenzhen and Dongguan. The Intellectual Property Office of Guangdong Province, directly under the People’s Government of Guangdong Province, is responsible for patent work, coordination with foreign parties, etc; IP offices have also been established at municipal level. Besides, the Trademark office of Guangdong Provincial Administration for Industry and Commerce, under the leadership, coordination and organization of the Trademark Office under the State Administration for Industry and Commerce, is in charge of the trademark infringement cases. Lastly, the
Administration of Press and Publication (Copyright Bureau) of Guangdong is accountable for copyright related affairs while custom offices in Guangdong are responsible for border protection of IP.

(3) IP agencies in Guangdong province

By October 21st, 2004, there were 52 patent agencies in Guangdong province, mostly located in Guangzhou and Shenzhen (18 in Guangzhou, 16 in Shenzhen and only one or two in each other cities), among which 11 can provide services to foreign parties. Most of these agencies are formed by transformation from former government offices into agencies of partnership or limited liability.

(4) Industrial associations

In 2003 the Implementation Measures of Trial Establishment of Intellectual Property Protection Self-discipline System of Guangdong Industrial Association, formulated by the provincial Office of Intellectual Property, made 10 industrial associations the first IP protection trial associations. The working experience of the Council of the Shenzhen Clock Association, the IP Protection Association of Shunde Furniture Industry, the Guangdong Hairdressing Association, etc. has been popularized.

(5) IP education and training institutions in Guangdong

At basic educational level, the experience of the trial IP education in primary and middle schools in Nanhai District of Foshan is being summarized and popularized throughout Guangdong. At the tertiary education level, professional IP personnel cultivation has gradually been established with the founding of Intellectual Property Schools in Jinan University and South China University of Technology. Besides, a lot of forums, lectures and short-term trainings have been organized with the coordination and organization of the Guangdong Provincial Intellectual Property Office.
2. Development of IPPSS in Guangdong

(1) Guangdong with the most patent applications and trademark registrations in China has a big market demand in IPPSS.

The volumes of patent applications and trademark registrations in Guangdong have ranked the first in China in nine consecutive years, with 43,186 patent applications and 29,235 patent grants, taking up 17.02% and 19.5% of the national totals, increasing 25.7% and 28.4% over the previous year respectively. The number of trademark registrations in Guangdong is 76,528, accounting for 17% of the national total while trademark grants is 38,708, 16% of the national total. The annual increases of trademark applications and registrations have reached 22.4% and 22.1% respectively. In addition, the number of IP cases in Guangdong also ranked among the first in China, with 1,024 IP cases of first instance accepted by courts at various levels in 2003, accounting for one sixth of that in the whole nation. In all, the demand of IPPSS in Guangdong is very big.

(2) Further improvement of IP administration and service system

With the construction of the IP protection mechanism going deeper, the administrative systems of industry and commerce, copyright, patent, etc., covering the provincial, municipal and county levels, have gradually been established. At present, efforts have been intensified in building a provincial comprehensive patent database and a patent information service platform. With strong emphasis put on IP service for enterprises, the Opinions on Strengthening the Work on Intellectual Property in Private Enterprises and the Implementation Plan of Patented Technology of Guangdong have been formulated; the Strategic Patent Promoting Project of Guangdong Province has been carried out; the Program of IP Training in Private Enterprises has been established and implemented; a series of measures such as financing private enterprises in patent application and granting patent award to pacesetter enterprises have been taken.

(3) Continued enhancement of IP protection in exhibitions and industry associations
Guangdong hosts various exhibitions. Showing and selling a great number of new products, the exhibitions are important places for IP protection. Thus Guangdong formulated the Implementation Plan of Exhibition IP Protection on Trial Basis, making 11 exhibitions the first trial ones. The IP protection experience of the Guangzhou Exhibition Commodities’ Fair has been popularized at other exhibitions. As industrial associations also play an important role in IP protection, the Provincial Intellectual Property Office drew up the Implementation Measures of Trial establishment of Intellectual Property Protection Self-discipline System of Industrial Associations in Guangdong in 2003 making 10 industrial associations the first trial associations.

(4) IP awareness and IP protection of enterprises greatly improved

As the biggest industrial province in China, Guangdong has nearly 25,000 scale enterprises, many of which have established their market competitiveness through continuous independent innovation. These enterprises have enhanced their IP protection awareness and competence dramatically. Huawei Technologies can be served as a good example of successfully implementing IP strategies. With RMB 31.7 billion sales revenue, 85% of which from the sales of patented products, the company has applied accumulatively for 4,628 domestic patents and 641 PCT international patents and foreign patents, 1,127 of which has been granted. It has also registered 677 domestic trademarks by June, 2004. Huawei has a workforce of 22,000, 46% in R&D department; more than 100 people are responsible for IP management (the number will increase to 150 according to the company officials). In the famous Cisco Huawei International IP Lawsuit, Huawei gained the out-of-court settlement by making use of its IP rights. This has set a good example for other enterprises, promoting them to start making their own IP strategies.

3. Advantages and disadvantages of IPPSS in Guangdong

(1) Compared to HK, IP attorneys in Guangdong are more familiar with the legal system and social environment in the Mainland

Scale enterprises refer to state-owned enterprises and the non-state-owned enterprises with sales of products above five million RMB.
Witnessing the reform in the Mainland by themselves, IP attorneys in Guangdong who have studied and worked in the province for a long time are very familiar with the changes and development of Mainland’s IP system and have established wide social connections in the Mainland. They, compared to their HK counterparts, may be weak in English and the Anglo-American legal system and lack a worldwide vision, but they have the local advantage which their HK counterparts lack. Thus, the local advantage of the IP agencies in Guangdong and the international edge of the agencies in HK enable the two to be complementary to each other.

(2) IPPSS in Guangdong in general are in its “infancy”

Just finding its market place, Guangdong’s IPPSS is still in its “infancy” and is not fully in line with the market demand. Due to the incompetence of Guangdong’s IP agencies, a lot of business is done by agencies from other provinces and areas. According to statistics, among 34,339 patent applications in Guangdong in 2002, 21,814 applications were applied by agencies, among which 16,958 were applied by Guangdong’s patent agencies and the other 4,856 by agencies from other provinces or areas, accounting for 22%.

(3) Small and weak, IP agencies in Guangdong should improve their professional and service level.

Firstly, most IP agencies are small-scaled. At present even the biggest patent agency in Guangdong has only 17 patent attorneys. Then, the business volume and the turnover are rather low. In 2002, there were only 6 agencies with annual patent applications over 1000 and only 8 with turnovers above one million RMB. Thirdly, highly qualified patent attorneys are wholly insufficient. There are few attorneys in invention patent applications in some high-technological areas. In 2002, high-tech invention patent application service provided by agencies in Guangdong only took 28% of the total invention patent applications in the province. The low professional level of some attorneys even resulted in the ill protection of some inventions.
### III. Analysis and Prediction of the IPPSS Supply and Demand in HK and Guangdong

#### 1. Supply and demand of IPPSS in HK and GD

After the statistic analysis of the questionnaires, we find the following information: the service of demanders (all types of enterprises) of IP support service need in Hong Kong and Guangdong, the regions where the service provided, IP management and IP rights utilization of the IPPSS demanders and the IPPSS providers’ intention of making use of CEPA.

**1) IP services needed by Service demanders**

Trademark rights takes the biggest part of the IP rights already enjoyed by service demanders, 31.6% and 23.57% respectively in HK and Guangdong. Concerning the types of services, “patent application and trademark registration” are the most needed, accounting for 22.39% and 14.18% respectively in the two areas.

**2) Regions where IP service is demanded**

HK’s IPPSS demanders received most of the services from HK, some from other regions in Mainland China, then from Guangdong and lastly from other countries. The service demanders in Guangdong received the services mainly from Guangdong and other regions in Mainland China, then from other countries and lastly from HK. Thus the IPPSS demanders in HK and Guangdong have their IP-related operations mostly in local areas.

**3) IP management and IP rights utilization of IPPSS demanders**

According to interview research, IP demanders in HK and Guangdong are different in their management and utilization of IP rights. After HK’s implementation of the new
trademark law, though the application procedures of trademark registration becomes much more simplified, a lot of enterprises still prefer to have an agency in order to enjoy the professional and quality supporting services. The no. of patent applications through agencies increases relatively significantly. One of the patent agent companies says they have maintained a double-digit increase every year, with a 24% increase in 2003 and an estimated 27% in 2004. The reason for this increase is that foreign investors, paying more emphasis on IP protection in the Mainland, are applying for more patents in Mainland China. However, the picture in Guangdong is different, with almost 70% of the enterprises managing their IP operation by themselves instead of commissioning any intermediary companies.

(4) Demanders’ intention of making use of CEPA

Around 60% of the IPPSS demanding enterprises in both Hong Kong and Guangdong have no plan to develop business by taking advantage of CEPA. 17.46% of the enterprises in HK are intended to explore new business in Mainland’s other areas outside Guangdong, 9.52% will continue to focus on the business in HK and only 7.94% are planning to expand business in Guangdong. Meanwhile, 19.31% of the IPPSS demanding enterprises in Guangdong prefer to open business in their untouched regions in Mainland China, 12.02% will concentrate their business in Guangdong and only 8.15% are going to do business in HK.

2. Business operation of IPPSS providers

(1) Location of customers

Customers of HK’s IPPSS providers are mainly in HK. The number of their customers in other countries ranks the second, followed by that in other areas of the Mainland China outside Guangdong and lastly comes that in Guangdong. On the contrary, customers of Guangdong’s IPPSS providers are mostly located in Guangdong. The number of customers in other areas of the Mainland ranks the second, HK the third and other countries the last.
(2) Services provided

IPPSS provided by agencies and law firms in HK are mostly “consultancy service” and “patent application and trademark registration”, followed by “strategic planning” and “IP litigation”, while IPPSS provided by their counterparts in Guangdong are mostly “consultancy service” and “IP litigation”, followed by “patent application and trademark registration”. In all, the services provided by IP agencies and law firms can basically meet the demand of customers, which has been mentioned above. Comparing the situation in Guangdong and HK, we can find that services in “consultancy service”, “patent application and trademark registration”, “strategic planning” and “IP information service” in HK are provided more than those in Guangdong, while services in “IP training”, “value appraisal” and “IP litigation” in HK are less than those in Guangdong.

(3) Staff of IPPSS providers

The IPPSS providing agencies and companies with one to five professional personnel in HKSAR and Guangdong take nearly half of the total service providers, while agencies and law firms with more than five professional personnel take only a small part. From interviews in Hong Kong, we find that there are about 100 certified attorneys engaging mainly on IP business in the service supplier’s aspect, whose number was estimated according to the membership of the HK Institute of Trade Mark Practitioners and the Asian Patent Attorneys Association Hong Kong Group. According to the practice that every attorney has three to four assistants, it can be estimated that people working in this sector in HK total around 400 to 500. However, considering the nonmembers of the above-mentioned two associations, the number may increase.

(4) IPPSS providers’ intention on making use of CEPA

After the signing of CEPA, IPPSS providers in Guangdong and Hong Kong will seize the opportunities provided by CEPA to further explore market. According to the survey, 35% of the HK agencies will continue to develop their business in Hong Kong, 15% will expand their operation to Guangdong and 10% to other areas in the Mainland. On the other hand, 30.4% of service providers in Guangdong will still focus on business development in
Guangdong, 21.7% and 8.7% of them will seize business opportunities in Hong Kong and in other areas of Mainland China respectively.

3. Prediction on supply and demand of IPPSS

(1) IP statistics in HK

![IP statistics in HK](image)

<table>
<thead>
<tr>
<th></th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004 (11.30)</th>
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<td>20446</td>
<td>20382</td>
<td>18532</td>
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<td>standard patent applications</td>
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<td>9130</td>
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<tr>
<td>short-term patent applications</td>
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<td>333</td>
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<td>386</td>
</tr>
<tr>
<td>design applications</td>
<td>1977</td>
<td>2183</td>
<td>2339</td>
<td>2757</td>
</tr>
</tbody>
</table>

According to the graph, trademark applications in Hong Kong had a slight decrease from 2001 to 2003, but the application volume on general remained stable. By Nov.30th, 2004, trademark applications have reached 91% of that in the last year. Then the numbers of standard patent applications and short-term patent applications show little change from 2001 to 2004. Lastly, design applications saw a gradual increase from 2001 to 2003. By the end of November 2004, design applications have increased around 18% compared to that in 2003.

(2) Prediction on patent applications and grants in HK
The number of patent applications and grants in Hong Kong in the coming several years, based on the numbers from 1991 to 2004, will be predicted by using double exponential smoothing with the weight $\alpha = 0.7$. The smoothing results show that the patent applications and grants from 2005 to 2007 will increase steadily. The predicted total applications in 2005, 2006 and 2007 will be 10,722, 11,191 and 11,661 respectively, while the total grants will be 4,810, 5,511 and 6,211 respectively.

The above graph shows a dramatic increase in patent applications in Hong Kong in 1998, which is due to the implementation of the Patents (Transitional Arrangements) Rules. In 1999 applications reduce to a normal level but are still more than the annual totals of the years before 1998. The years from 1999 to 2004 witnessed a gradual increase, and this trend will be continued in the next three years.
The above graph indicates that from 1991 to 2004, despite the decrease in 1997 and 2001, the patent grants in Hong Kong are going up. The next three years will see a further and bigger increase.

(3) Analysis of IP applications and registrations in Guangdong

This graph shows a gradual growth in patent grants in Guangdong from 1995 to 2003. Trademark registrations from 1995 to 1997 enjoyed the biggest increase, resulting in the peak in 1997. However, it saw a 50% decrease in 1998, followed by a big and continuous increase in 1999 and years after. The ups and downs of the trademark registrations in Guangdong are the result of policy changes. The amendment of Intellectual Property Law of People’s Republic of China in 1997 encouraged trademark registrations and thus led to the amazing increase as a result of enterprises’ trademark registration heat. In 1998, with the fading of the heat, the registrations return back to the normal level.

(4) Prediction on Guangdong’s Patent Registrations from 2005 to 2007 by using exponential curve

Based on the statistics of patent applications in Guangdong form 1985 to 2003, future application annual totals are predicted by using exponential curve. The result is shown in the following graph. It is predicted that the patent applications in Guangdong will grow by
a large margin every year, with 90,509, 117,690 and 153,034 patent applications in 2005, 2006 and 2007 respectively.

From the quantitative analysis and predictions in this part, the conclusion can be drawn that the IP applications, grants and registrations in both Hong Kong and Guangdong will increase stably every year in the future. This indicates a great market potential for IPPSS in the two areas. Besides, the growth in IP business will increase employment by directly creating new jobs in the IP industry and indirectly increase employment by providing a better IP protection environment to attract more investment and to help industrial development. In the interview with the IP agencies in Hong Kong and Guangdong, when being asked about whether to increase staff or not, most of the agencies say that they will employ more people according to the actual situation. In general, the increase of IP business in Hong Kong and Guangdong will have a positive influence on the employment in related-industries in the two areas.
IV. Proposal to Strengthen Cooperation between Guangdong and Hong Kong for Development of IPPSS

Based on the above analysis and having taken account of the advice drawn from questionnaires as well as interviews, this part will propose a series of suggestions on developing IPPSS in Guangdong and Hong Kong. Centered on strengthening cooperation of IPPSS between Guangdong and Hong Kong, the suggestions will target on service providers, service demanders, and government departments concerned in the two regions respectively.

1. Review of IP cooperation in Guangdong and Hong Kong

Intellectual property cooperation between Guangdong and Hong Kong was initiated when the two economies started to engage with each other. As early as China adopted the policy of Reform and Opening Up in 1979, manufacturers from Hong Kong have developed a cooperative operational module called Front Office Back Factory, namely, to establish head offices in Hong Kong while transferring production bases to Guangdong for less expensive land and labor resources. According to *Guangdong Statistics Yearbook 2004*, from 1979 to 2003, Guangdong’s actual utilization of capital from Hong Kong has amounted to USD 113.896 billion, accounting for 64.5% of the total. Hong Kong has always been recognized as the main investor and trade partner to Guangdong. With closer economic cooperation in Guangdong and Hong Kong, cooperation of intellectual property has been put on to agenda, which has developed from joint efforts to crack down on cross-border IP infringements to comprehensive cooperation and engagement concerning intellectual property in the two regions.
The 6th Hong Kong Guangdong Cooperation Joint Conference in August, 2003 marked a milestone in the history of intellectual property cooperation of the two regions. During the conference, IP cooperation was initially listed among the topics for discussions. A special working group for IP protection and a mechanism for holding regular meetings were established, and a detailed schedule of cooperative projects was formulated. Besides, IP experts have held the 1st meeting on Intellectual Property Cooperation between Guangdong and Hong Kong, and constructed the Online Intellectual Property Database for Guangdong, Hong Kong and Macao. A campaign called "No Fakes" Pledge Scheme has been launched in two regions and a series of seminars titled Intellectual Property and the Development of Small and Medium-Sized Enterprises (SMEs) were organized. Customs authorities in Guangdong and Hong Kong strengthened their coordination in striking the cross-border infringements of IP by means of regular meetings, exchanges of intelligence as well as joint actions. In the mere 2003, customs of the two regions have exchanged 79 pieces of intelligence of various types, taken 3 joint actions, investigated 24 cross-border infringements, followed up the information about IP in 126 processing trust deeds and letters of authorization of copyright, and confiscated a large amount of CD-ROMs being suspected to be pirate.

2. Proposal for Service Providers

(1) Strengthen cooperation between IP agencies in Guangdong and Hong Kong

Intellectual property agencies in Guangdong and Hong Kong boast supplementary advantages, with the Hong Kong agencies featuring familiarity with international practices and Britain legal system, English proficiency and high-quality services, while the Guangdong agencies featuring a good master of laws in Mainland and a wide-spread relationship network. Currently, voluntary cooperation among intellectual property agencies of the two regions is insufficient, and the magnitude and altitude of the cooperation is limited. We should explore more opportunities for cross-border cooperation, so as to draw up the advantages from each other. Guangdong agencies could learn the advanced expertise from their counterparts in Hong Kong, expand overseas business and grow full-fledged as soon as possible. Agencies from Hong Kong could cooperate with
Guangdong agencies to develop business in Mainland, or directly establish offices in Guangdong by transforming their role as a bridge between Mainland and the rest of the world into a direct participant in Mainland IP industry. Cooperation can be conducted by the means of organizing meetings, parties, forums, study visits and forming strategic alliance, etc.

(2) Establish industrial standards for IPPSS and intensify industrial discipline

Since IPPSS belongs to productive service sector which demands professional knowledge, it’s not easy for customers to judge the serving quality in the process of utilization and they can only do so right after the service. Therefore, it is necessary for Guangdong and Hong Kong to establish industrial standards for IPPSS, formulate codes of conduct for service providers, and define criteria for service quality assessment.

IPPSS is an emerging industry in Mainland China which was liberalized for market competition not long ago. As the sizable development as well as the increasing competition of the industry, it becomes more and more urgent to standardize the disordered competitive practices. For instance, it is unveiled from the survey that some legal firms assisted the misbehaving manufacturers to infringe on intellectual property intentionally, and a number of IP agencies competed to acquire business in a vicious manner which has decreased service quality, injured customers interest and ruined reputation of IPPSS in the society. Hence, Guangdong should pay additional attention to standardize IPPSS regulations, bring into full play the administrative function of industrial associations, develop orderly and benign competition, and intensify information communication and industrial discipline, so as to propel the agencies’ development within virtuous cooperation and competition.

(3) Keep pace with time and improve quality and professionalism of IPPSS

With the ever-changing evolution of science and technology and the development of knowledge-based economy, IPPSS is confronted with new challenges continuously. Only if service providers in Guangdong and Hong Kong keep pace with the time to upgrade their knowledge, acquaint with the state-of-the-art technology and innovate the services
can they support their customers to address the emerging problems concerning intellectual property. At present, some of the high-tech enterprises in Guangdong commission the agencies from the other provinces for application of invention patents, which has proved their mistrust on capabilities of agencies in Guangdong. Hence, to adjust themselves to the evolving environment and enhance the quality and professionalism of IPPSS, agencies should establish study-oriented mechanisms and incentive systems, actively participate in operational trainings, exchanges and seminars within the industry. Moreover, they should undertake special researches in line with the customers’ requirements, and ensure the workforce maintain vitality and share a common vision, so as to enhance competitiveness.

3. Proposal for Service Demanders

(1) Shift obsolete concepts and increase IP awareness

Intellectual property issues that concern the small and medium-sized enterprises (SME) can be concluded in two aspects. First, these enterprises have inadequate knowledge about IP protection. They cannot realize the necessity of costing to protect IP. For they think it is not late to start legal proceeding right after being infringed. Second, they lack the awareness of avoiding infringement on intellectual property. In addition to malicious infringements, some of the SME which are merely devoted in production are prone to breach the regulations on intellectual property unconsciously. Therefore, they should shift the obsolete concepts, increase awareness of intellectual property, and voluntarily join in IP protection campaign launched by the government. At the same time, the enterprises should replace the passive attitude on IP protection by an active one. Intellectual property should be guarded against before it faces severely infractions which may lead to huge financial loss or even a fatal threat to the survival of the enterprises. Enterprises should be alert to take any action which might infringe on the intellectual property of the others.

(2) Implement IP strategy and forge core competitiveness of enterprises

Proceeding from a strategic perception, enterprises should utilize intellectual property as an efficient instrument to develop business and compete in the market. They should create, protect and make use of their own intellectual property to forge the core
competitiveness of the enterprises. High-tech enterprises, brand-name companies, enterprises with trademarks, designing companies, innovation companies and any other IP-intensive enterprises should implement intellectual property strategies, guard against the intellectual property of their R&D outcomes or brands, and establish an administrative system on IP protection which covers every sector of the business including R&D, production, marketing, etc. Under the leadership of the enterprises’ management, the strategies should be operated by the responsible IP personnel or departments and followed by relevant departments. It would impenetrate through every section of the business by inter-departments communication. Since the full-content IP strategies are strict on the competence of the staff, it is essential for the enterprises to provide trainings to the staff, including the trainings for senior officials responsible for formulation and implementation of the strategies, middle-level directors in charge of the operation of ordinary affairs relevant to intellectual property, and common employees who may have a basic understanding on intellectual property.

(3) Perform the function of industrial associations and practice industrial self-assistance and supervision

Generally speaking, enterprises of the same industry may encounter the same problems of intellectual property. For example, problems such as patent infringement of some core technology, imitation of certain designs, intellectual property barriers on given merchandises in international trade, will probably plague enterprises in a certain industry. Accordingly, industrial associations should perform their function as exchanging information, sharing resources, coordinating, supervising and addressing problems jointly. Small enterprises of an identical industry can also establish a centralized administrative system to improve the efficiency in intellectual property management. For instance, Hong Kong has already processed the collective administration of the copyright of songs broadcasted in public. It may be considered to implement a unified administration to the matters concerned copyright of songs distributed in album and those downloaded from Internet, and solved all the copyright problems which relating users involved by a unified copyrights organization. Guangdong can follow this approach, or establish a unified administrative mechanism of copyrights in Guangdong and Hong Kong. Additionally,
given to the existing insufficient mobility of intellectual property in the two regions, an IP transactions platform should be set up. To crack down on the rampant counterfeit merchandises on the market, “No Fakes” Pledge scheme should be promoted and leasers of shops are required to provide relevant IP certificates of their merchandises.

(4) Frequently engage in IP exchanging activities and seek for IPPSS voluntarily

Many enterprises could not realize the necessity of IP protection, and know little about the latest news on intellectual property propelled by technological advancement. These enterprises should seek for IPPSS voluntarily, engage themselves in IP exchanging activities, learn about the current IP development and identify their own IP demands, so as to prepare themselves to adopt any IP strategy if necessary. The channels of IP interactions are diversified, including forums, lectures, trainings, online searching as well as exchanges among the peers.

4. Proposal for Responsible Government Departments

In the age of knowledge-based economy, as a kind of propertized knowledge and a new type of essential factor of production, intellectual property has become the fundamental and dominant element in the constitution of core competitiveness of an enterprise, a region or a whole nation. The coverage of intellectual property has been regarded as a key index in competitiveness assessment. Both governments in Guangdong and Hong Kong must shoulder the responsibility to create favorable innovative mechanisms, establish IP administrative systems, develop IPPSS, and enhance international competitiveness of Guangdong and Hong Kong driven by the force of intellectual property, by taking full advantage of their abundant information and resources and strengthening cross-border cooperation.

(1) To further perfect IP legal systems in Guangdong and Hong Kong and enhance IP administrative and enforcement competence

Based on the existing legal framework and targeted at the emerging problems or phenomena in judicial practices and legal enforcement, legal systems for intellectual
property in Guangdong and Hong Kong should be further improved by legislation. The problems reported in both regions include insufficient punishment on IP infringements; difficulties in providing evidence of IP infringements cases; underdevelopment of IP legal systems in contrast to speedy scientific and technological advancement and troubles in tracing back Internet IP infringements; unfledged laws and regulations on intellectual property; etc. Legal section must develop with the pace of the time and adjust the relevant norms accordingly. Hong Kong with an independent legislature can continue improving IP laws. For instance, the existing Hong Kong’s trademark law came into force in 2003. Guangdong with no right to amend laws can formulate regional regulations under legal procedure to perfect the IP administration and promote IPPSS. Although the IP legal system in Mainland was developed not long ago, we must strive to exercise the rule of laws, improve the IP professionalism and efficiency of the judicial staff and government officers, streamline the procedures for IP application, registration and litigation, and rule out regional protectionism. Judicial practitioners must perform in accord with the laws, and guarantee citizens’ IP rights in line with WTO’s Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). This is a common aspiration among legal firms and enterprises that were interviewed in the survey.

(2) Keep on strengthening intellectual property cooperation in Guangdong and Hong Kong and sternly check the flows of counterfeit merchandise on ports or exhibitions

Since products that infringe intellectual property are mainly concentrated on ports or exhibitions, we should strengthen cross-border cooperation to crack down on IP infringements conducted on ports and prohibit counterfeits products demonstrating on exhibitions. At present, customs authorities in Guangdong and Hong Kong have built up a communication and coordination mechanism and achieved remarkable success in joint action of checking IP infringements. We should intensify our efforts on the basis of the previous experiences. According to the Regulation of the People’s Republic of China on the Customs Protection of Intellectual Property Rights rectified on November, 26, 2003 and promulgated on March, 1, 2004, customs in Mainland China have formulated new regulations on qualifications of customs’ IP protection, rights of cargos examination,
authentication assistance, purview of customs' investigation, and disposal of infringing cargos. The new regulations have upgraded the overall standard of IP protection of customs and more strictly accorded with TRIPS Agreement. Efforts should be made to assure the IP cooperation of customs between Guangdong and Hong Kong in compliance with the new regulations. Moreover, as exhibitions are frequently hold in Hong Kong and Guangdong, we should exchange the experience of striking counterfeit merchandises on exhibitions, protect intellectual property, and preserve the reputation of exhibitions as well as the regions.

(3) To construct IP support system for small and medium-sized enterprises in Guangdong and Hong Kong

Generally speaking, governments need not provide financial support to large enterprises which have adequate finance to implement IP strategies. However, intellectual property is a heavy load for small and medium-sized enterprises. At present, Guangdong and Hong Kong have granted subsidies to patent applications. For example, Innovation and Technology Commission of Hong Kong set up a Patent Application Grant which offers subsidies to functional patents or invention applications with each grant no more than HK$ 100,000 or 90% of the total cost. In 2003, Intellectual Property Office of Guangdong Province worked out Opinions on Strengthening the Work on Intellectual Property in Private Enterprises and adopted ten measures including subsidizing patent applications of private enterprises. Even though, small and medium-sized enterprises could barely handle IP protection and have no ability to exercise their due rights when infringed. Therefore, it is necessary to build an IP support system providing consultations, trainings and information to small and medium-sized enterprises in Guangdong and Hong Kong. Alternatively, an aggregate IP administration for small and medium-sized enterprises which could save the cost of IP protection should be established. For instance, some industries can establish organizations such as industrial IP administration association to manage the intellectual property issues of its members, and follow up, negotiate and mediate the infringements.

(4) Increase IP researches and consultations and explore channels for receiving complaints of IP infringement
The major IP problems that prevail in Guangdong and Hong Kong lie in three aspects. First, research on IP protection of high and new technologies is insufficient. Take the CISCO-Huawei International IP Lawsuit as an example. Although the dispute was finally settled with the support from American legal institutions, it reflected the underdevelopment of intellectual property in China. Second, the general public's consciousness of intellectual property is mainly focused on passive resistance such as anti-piracy and anti-counterfeiting, instead of active intellectual property strategies. Enterprises are not motivated to implement IP strategies, either. Third, the mass of enterprises are inexperienced to react when encountering problems concerning intellectual property, and puzzled about where to consult, complain and carry through prosecutions. Given to the above-mentioned problems, Guangdong and Hong Kong should join efforts to study the emerging IP problems in the new era, such as IP strategies in economic cooperation between the two regions, IP issues in international technologies transactions, and IP issues in service sector (including finance, data base, and business operation strategies). Moreover, more efforts should be made to expand the influence of IPPSS to the society by bringing to full play the functions of relevant institutions and non-governmental organizations, providing public consultation service, enriching the Online Intellectual Property Database for Guangdong, Hong Kong and Macao, exploring channels for appeals and prosecutions, and setting up hotlines for IP complaints.

(5) **Intensify the cooperation of IP education and trainings between Guangdong and Hong Kong**

It is found in the research that one of the major constraints of IPPSS is insufficient human resource, especially qualified patent attorneys who acquire state-of-the-art technologies, with a good command of IP laws and foreign languages skills, and experienced in IP practices. IPPSS is a knowledge-intensive industry basically relying on professional personnel, which distinguishes itself from the other industries in service sector. Both Guangdong and Hong Kong have developed multi-layers IP educational programs comprising basic education, degree education and short-term trainings, although more financial and personnel support should be provided. Two regions can cooperate to foster IP professionals by means of establishing joint venture schools, exchanging of
teaching staff, etc. The newly established Intellectual Property School of Jinan University and the Intellectual Property School of South China University of Technology are two exclusive IP schools in the south China, which are expected to perform their functions of promoting IP cooperation between Guangdong and Hong Kong. With implementation of CEPA and liberalization of legal service in Mainland China, Hong Kong citizens are allowed to establish IP agencies in Mainland. According to Temporary Measures Concerning Trademark Agency by Service Providers from H. K. and Macao SAR in Mainland, from January 1st, 2005, service providers from Hong Kong and Macao are permitted to operate IP business in Mainland by establishing joint ventures, cooperative businesses or solely-founded enterprises. More and more citizens from Hong Kong are planning to attend qualification exams for patent attorneys in Mainland, although the different legal system and language impede them from moving forward. Thus, as a pilot attempt to further cooperation, we suggest organizing tutorial classes in Hong Kong for those willing to take the exams.

(6) Increase IP awareness of the whole society and optimize environment for IPPSS in Guangdong and Hong Kong

The surveys on social recognition of intellectual property in Guangdong and Hong Kong show that public awareness of intellectual property has been improved. However, consolidation of IP awareness deserves our consistent efforts in dissemination. Especially in the fast-changing world, advanced digital and internet technologies make replication and spread of information zero-cost, which further requires the public to raise IP awareness voluntarily. Guangdong and Hong Kong should maintain their joint efforts in promoting intellectual property and intensifying IP awareness of the general public. Students should be guided to develop IP concepts from childhood (For instance, teachers ask for permission before using the articles written by their students), so that intellectual property can be valued by the whole society. In addition to the annual campaign of 4 • 26 International Day for Intellectual Property, up-to-date IP development should be broadcasted on TV or radio programs in Guangdong and Hong Kong, so as to popularize the concepts of intellectual property.

(The End)