

Commercialization of Intellectual Property Benefits High-quality Economic Development

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The Outline of the 14th Five-year Plan supports the development of Hong Kong in eight key areas, one of which consists in forging the SAR into a regional intellectual property (IP) trading centre. But does IP trading refer to IP derived in Hong Kong and patents applied locally or does it cover overseas patents as well? What are the advantages and potential strengths that enable Hong Kong to become an IP trading centre?

Professor Heiwai Tang collaborated with the Hong Kong Young Industrialists Council during the past few months to prepare a detailed research report to address the above questions. The research work also carries an in-depth analysis of the trade and financing of IP, with a specific focus on patents, of the governments of China, the US, Singapore, etc. in recent years.

Tapping the vast potential of IP-intensive industries

According to data of the World Bank, the total value of the global IP trade skyrocketed from US\$278 billion in 2012 to US\$435 billion in 2021. More importantly, moving towards an IP economy can produce an enormous positive externality that not only stimulates economic growth but can also create more high-quality employment opportunities. As indicated by a study of the United States Patent and Trademark Office, IP-intensive industries accounted for 41% of the US economic output in 2019, involving 63 million jobs (or 44% of the total employment) on American soil. The earnings of workers in IP-intensive industries are 60% higher compared with their counterparts in non-IP-intensive industries. Research by the European Patent Office and European Union Intellectual Property Office also finds that, between 2017 and

2019, the average weekly personnel cost in IP-intensive industries was EUR840, nearly 41% higher than that of non-IP-intensive industries.

Amid the worldwide trend of digital revolution and technological race, the demand for the commercialization of IP is bound to soar, with the centre of activity switching to the economically thriving Asia-Pacific region. Data of the World Intellectual Property Organization shows that the Asian region accounted for 73% of the global number of patent applications in 2021. Against this background, Asia is in need of a regional IP trading centre more than ever. In order for Hong Kong to grasp the opportunity and get ahead in the race, it should be aware of the many challenges to the process of IP commercialization and devise development strategies that leverage its own advantages in connection with relevant experience overseas.

To commercialize IP, it is essential to simultaneously advance different aspects of Hong Kong's ecosystem, covering legal framework and law enforcement, valuation mechanism, transparency of information, risk management, and incentivization of stakeholders. In terms of the establishment of legal framework and law enforcement, apart from coordinating the discrepancies among legal systems in different jurisdictions, it is necessary to ensure comprehensive protection for IP both at home and abroad so as to facilitate management of and financing with IP and to explore a cost-effective alternative dispute resolution mechanism.

For the valuation mechanism, it is necessary to develop a common approach to carry out IP valuation and to form a valuation team consisting of technical and financial experts in order to ensure comparability and verifiability across regions as well as to reduce the high cost of valuation. As for information circulation, a framework and a platform for transparent information sharing are called for so that stakeholders can readily obtain the information they need and transaction costs can be brought down by direct connection between buyers and sellers. In risk management, the focus should be on evaluating market fluctuations, the risk of outdated technology, continuous monitoring of market changes, and optimizing IP investment portfolios. Given the considerable cost of IP commercialization, fiscal policies encouraging participation of various stakeholders should be in place.

Equally viable Chinese and Western strategies

As the world's two largest economies, China and the US address the above-mentioned challenges quite differently. While the commercialization of IP is mainly driven by the private market in the US, a top-down approach is often taken in China.

In the US, where the IP market is dominated by the private sector, the buying and selling of patents is mostly handled by such platforms as IAM Market and Industry Patent Purchase Programme. The role of the government basically lies in creating the appropriate environment and motivating inventors, enterprises, and investors to participate in business activities related to IP. For example, through its Patents 4 Partnerships platform, the US Patent and Trademark Office (USPTO) provides a centralized open database of US patents, which helps to reduce the cost of information research. Joining hands with public and private institutions including Amazon, Citibank, Alibaba, the Motion Picture Association, the USPTO, and the European Union Agency for Law Enforcement Cooperation, the US National Intellectual Property Rights Coordination Centre coordinates combat against acts of criminal infringement, providing protection for American IP rights.

As China is playing an increasingly important role in IP commercialization across the globe, the total value of its IP trade exports saw a tenfold surge from US\$1.16 billion in 2016 to US\$11.74 billion in 2021. In 2021, In accordance with the Patent Cooperation Treaty (PCT), international patent applications submitted by the China National IP Administration amounted to 69,540, representing one-fourth of the total PCT applications and placing China at the top of the game.

As a latecomer among the major players, China has been actively promoting IP commercialization over the past few years. Outline for Building an IP Power (2021–2035) was released in September 2021, mapping out the top-level plan in the following six categories: an IP system, an IP protection system, an IP market operating mechanism, a public service system, a humanistic and social environment, and global IP governance. Relevant departments of various regions are required to implement the policy measures pursuant to their respective local situations. Explicit development goals are spelt out in the Outline, including, by 2025, significant results

to be produced in the process of building a strong IP country, the added value of patent-intensive industries to account for 13% of the gross domestic product (GDP), the added value of the copyright industry to contribute to 7.5% of the GDP, and the total annual import and export value of IP royalties to reach RMB350 billion.

As for Singapore, its government is also committed to promoting the commercialization of IP, especially when it comes to encouraging companies publicly-listed in the country to disclose their intangible assets. Back in 2020, the Singapore Exchange partnered with the Intellectual Property Office of Singapore to unveil the Intangible Disclosure Evaluation and Audit Scheme to render listed and to-be-listed companies with financial support to evaluate their intangible assets. In December 2022, the Intangibles Disclosure Industry Working Group kick-started public consultation on the Intangibles Disclosure Framework and relevant work has already been done. It is anticipated that Singapore-listed companies are expected to disclose their intangible assets but will have the option to disclose the monetary value or not.

Recapitulating the leading countries' experience

To generalize the experience of the US, China, and Singapore in IP, while their strategies to address the above challenges differ, they do share similarities. In terms of strengthening the IP legal framework, the usual practice is to set up IP courts, improve relevant rules and regulations, and promote mediation as a cost-effective alternative means of dispute-resolution. Given the high costs of services and products pertaining to registration, legal, valuation, financing, insurance, etc., governments are inclined to offer continued subsidies, tax relief, or other cost-effective alternative options to stakeholders.

The nurturing and recruitment of talent is also the top priority for the three national governments, which have not only been actively collaborating with stakeholders in higher-education institutions, trade organizations, etc. in the introduction and grooming of IP talent by a variety of means. Towards this end, they have demonstrated effort in creating a secondary market, including the establishment of A*STAR Collaborative Commerce Marketplace, Innovation Marketplace by

Innovation Partner for Impact, and functional platforms for IP, in order to facilitate information circulation and IP transactions. In addition, they also endeavour to consolidate their status in the global IP economy through collective efforts with multiple countries, e.g. by setting up the Patent Prosecution Highway.

It is noteworthy that there are both uniqueness and limitations in the experience of these three economies. The American IP market thrives because of its first-rate research and development (R&D) capabilities, financial system, and economic size while the Chinese government can ensure effective implementation of its policies by driving state-owned enterprises via performance indicators. Meanwhile, despite its rich experience in promoting IP financing, Singapore has had its fair share of setbacks, e.g. its Intellectual Property Financing Scheme has come to an abrupt end. After summarizing relevant experiences, the Singapore government has in recent years launched the Singapore IP Strategy 2030, holistically expanding policy support for the ecosystem for IP commercialization, e.g. by positioning Singapore as a connecting point with the rest of the world in support of the Association of Southeast Asian Nations (ASEAN), ensuring that a world-class IP system is in place, upgrading its international IP dispute resolution services, empowering companies to expand growth by making better use of IP, building a trustworthy ecosystem for IP valuation, cultivating a pool of talent versatile in IP, enhancing its international reputation, etc. The aim is to consolidate the status of Singapore as an international IP centre and to create high-quality job opportunities for Singaporeans.

Possessing self-knowledge is just as important

Although the progress with IP commercialization has been less than ideal in Hong Kong, thanks to a string of advantages, covering its wealth of experience and high efficiency derived from years of professional services, coupled with its sound legal system, desirable business environment, and capability in basic R&D, the SAR is poised to become a regional IP trading centre.

Along with drawing lessons from experiences abroad, Hong Kong should also capitalize on its own strengths to map out its own development path.

In the last few years, the SAR Government has focused relevant policies on the development of the original grant patent system as well as the implementation of the Application of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol) in Hong Kong. The objectives are to enable trademarks registered in the SAR and contracting partners of the Madrid Protocol to be recognized internationally. Local companies will be better equipped to go global and overseas companies will be attracted to set up offices in Hong Kong.

Besides the amendment of the Copyright Ordinance, the SAR Government has shown a good effort to nurture IP professionals and proactively introduce a “patent box” tax incentive that offers tax concessions for profits sourced in Hong Kong from qualifying patents generated through R&D activities.

Nevertheless, in face of the intense competition in the region, it behoves us to consider how we can more effectively make the pie bigger and mobilize social forces to build a regional IP trading centre through concerted efforts. Hong Kong’s most distinct advantage lies in the financial sector. Modelling on the frameworks and plans for forging Hong Kong as a green financial centre realized by the SAR Government and financial regulators over the years, the Government should contemplate how best to capitalize on the SAR’s edge as an international financial centre and set the rules to support banks and investors to accept companies’ intangible assets as collateral as well as issue financial products linked to IP assets. Meanwhile, it would be advisable to form a cross-sector IP trade union to promote cooperation among stakeholders and policy advocacy.

Due to space limitations, specific policy recommendations will be discussed in my next article in this column. Interested readers are welcome to attend the press conference on the study report organized by the Hong Kong Young Industrialists Council at the Productivity Council on 4 July. Professor Heiwai Tang will present the recommendations in greater detail at the event.