European Commission

CHINA IP SME HELPDESK

Case Study: Re-Registration of Patents in Hong Kong

SME details

Location of headquarters: Europe
Industry: R&D in AI-Intensive Sectors
Status in China: Early Planning Stages of Market Entry (Not Currently Present on The Market)

Case Background

The China IP SME Helpdesk was contacted by a European SME who was in the process of establishing a start-up company based on their recent technological inventions involving the use of AI. The SME had applied for a patent with the China National IP Administration (the CNIPA) to protect their latest invention in China – the future target market for the start-up. The CNIPA enquired whether the SME was also interested in extending their patent application to Hong Kong. The SME contacted the China IP SME Helpdesk to understand the benefits of having a patent in Hong Kong in addition to the patent in Mainland China, which they were focusing on. The SME also wanted to understand whether they could enforce their Mainland China patent in Hong Kong in the event of a patent infringement.

Actions Taken

Hong Kong allows patents granted by the CNIPA, the European Patent Office, or the United Kingdom Intellectual Property Office to be re-registered in Hong Kong via a simplified procedure bypassing the substantial examination which is done by one of the abovementioned patent offices. In case an SME has filed the international PCT application designating one of the abovementioned patent offices, the SME could automatically use the re-registration route to also obtain patent protection in Hong Kong. The same applies for applications directly submitted to these patent offices.

The re-registration of patents granted in China, the EU or the UK follows a two-stage formal registration procedure. In the first stage, within six months after the publication of the original patent application, the applicant files a 'request to record' with the Patents Registry of Hong Kong Intellectual Property Department paying the filing and advertisement fee of HK$ 448 (approx. € 55). In the second stage, once the patent has been granted by one of the 3 patent offices, within six months, the applicant needs to file an application of registration and grant of the patent with the Patents Registry of Hong Kong Intellectual Property Department paying another fee of HK$ 448 (approx. € 55). Both applications only undergo a formality examination, making the whole procedure rather simple and fast.

The China IP SME Helpdesk IP Business Advisor explained that because IP is territorial, meaning that patents obtained in Mainland China are not automatically valid in Hong Kong, the Mainland China patent would not be enforceable in the Hong Kong courts. If the SME does not have a patent in Hong Kong, others are free to produce, use and sell the company's invention in Hong Kong. Should the start-up need to take enforcement actions against counterfeits coming from Hong Kong it would be beneficial to have a patent registered in Hong Kong to be able to address the source of infringements.

Outcome

After careful evaluation, taking into account their business' scope and financial means, the start-up decided to forego the protection in Hong Kong and focus solely on the patent protection in Mainland China

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Lessons Learnt

- Hong Kong maintains a separate legal system from Mainland China. To obtain broader protection, the right holder must register their IP in both Hong Kong and Mainland China.
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- There are two types of patents granted in Hong Kong, namely standard patents and short-term patents. The invention patent in the Mainland China usually refers to the standard patents in Hong Kong.
- The grant of a standard patent in Hong Kong can follow two routes: standard patents (R) registration, which is the re-registration of a corresponding patent granted by one of the three designated patent offices including the CNIPA, the United Kingdom Patent Office, or the European Patent Office; or standard patents (O) the new and direct local original patent granting route.
- If you have applied for a patent in Mainland China, the EU, the UK, or if you have applied for a patent using the PCT route designating the Mainland China, the EU, or the UK, you can consider re-registering it in Hong Kong. Once your patents are granted in other countries, your patent in Hong Kong will also be granted. Just make sure not to miss the re-registration deadlines.

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