

A POLICY PROPOSAL OF GUANGDONG-HONG KONG-MACAO GREATER BAY AREA
INTELLECTUAL PROPERTY RIGHTS COORDINATION PROTECTION CENTER

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Abstract

With a series of important administrative plans and instructions, such as such as the *Outline Development Plan of Guangdong-Hong Kong-Macao Greater Bay Area* and the *Guangdong Province Three-year Action Plan on The Development in Guangdong-Hong Kong-Macao Greater Bay Area(2018-2020)*, it has become a consensus to strengthen the protection of intellectual property rights in the Greater Bay area in order to promote legal business environment. Although the intellectual property cooperation of Guangdong, Hong Kong and Macao has a remarkable progress, it still faces some outstanding problems due to the imperfect cooperation platform and mechanism, the difference of system rules among the three regions, and the inconsistency of protection standards and levels among the nine cities in the Pearl River Delta. In this regard, this memorandum provides idea of establishing an Guangdong-Hong Kong-Macao Greater Bay Area intellectual property protection center. In addition, this memorandum discusses the functions of the center, the rights granted, the legislative procedures for its establishment, and the obstacles it may confront. By adopting this proposal, the level of intellectual property rights protection in the Greater Bay Area will be greatly improved. At the same time, it is a good attempt to integrate the judicial and administrative systems of Guangdong, Hong Kong and Macao.

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Memorandum for Han Zheng, Vice Premier of the State Council of the People's Republic of China,
Leader of Guangdong-Hongkong-Macao Greater Bay Area Construction Leading Group

From: Hanmin Cao

Date: April 28, 2020

Action-Forcing Event

On November 2019, the World Intellectual Property Organization (WIPO) released its "2019 World Intellectual Property Report" revealing new trends in global innovation and reaffirming China's progress in technological innovation and intellectual property protection.¹ The report identifies hotspot cities in China as the main locations for innovation. For example, in terms of the number of patent application, Shenzhen-Hong Kong area, Beijing and Shanghai all rank high on the technology invention list. Carsten Fink, WIPO Chief Economist, highlights the rise of the Shenzhen-Hong Kong region in particular that the share of patent applications from Shenzhen and Hong Kong in China's total rose from 5 percent in 2000 to 28 percent in 2015.² Moreover, according to the *2019 global innovation index report* released by WIPO, the Shenzhen-Hong Kong area is the second largest innovation cluster in the world, surpassing San Jose-San Francisco innovation cluster of Silicon Valley in the United States, ranking behind Tokyo-Yokohama of Japan.³ Overall, these results demonstrate a change in China's

¹ World Intellectual Property Organization, "World Intellectual Property Report 2019, The Geography of Innovation: Local Hotspots, Global Network", November 12, 2019, https://www.wipo.int/edocs/pubdocs/en/wipo_pub_944_2019.pdf

² Carsten Fink, Kyle Bergquist, and Julio Raffo, "Identifying and Ranking the World's Largest Clusters of Inventive Activity", *World Intellectual Property Organization*, June 2017, https://www.wipo.int/edocs/pubdocs/en/wipo_pub_econstat_wp_34.pdf

³ Cornell University, INSEAD, World Intellectual Property Organization, "Global Innovation Index 2019",

attitude and progress towards technological innovation and intellectual property rights, which put forward a higher requirement for intellectual property protection in China.

Statement of the Problem

The Guangdong-Hong Kong-Macao Greater Bay Area, comprising nine cities in the Pearl River Delta region of Guangdong Province and the two special administrative regions of Hong Kong and Macao, covers a total area of 56,000 square kilometers with a total resident population of about 70 million, and a GDP of more than 10 trillion yuan.⁴ Although Guangdong, Hongkong and Macao all belong to same sovereign state – China - they operate two institutional systems and three judicial systems. Guangdong, Hong Kong and Macao have established their own legal systems for the protection of intellectual property under three types of jurisdictions based on the authorization of the constitution and the basic laws respectively.⁵ Therefore, there are inevitably differences in legislation, justice and even law enforcement concerning the ownership of intellectual property rights, intellectual property contracts, intellectual property rights infringement and so on. Also, the inter-regional institutional environment in Guangdong, Hong Kong and Macao has led to additional intellectual property transaction costs. At the same time, there are certain imbalances in the industrial structure, intellectual property operation and service in the bay area, which also limits the free flow of innovation elements in the bay area, and to a certain extent limits the integrated development of Guangdong,

https://www.wipo.int/edocs/pubdocs/en/wipo_pub_gii_2019.pdf

⁴ Central People's Government of the People's Republic of China, "Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area" February 18, 2019, http://www.gov.cn/zhengce/2019-02/18/content_5366593.htm#1

⁵ Hongqing Teng, Jinyan She, "Study on Linkage Mechanism of Intellectual Property Administrative Protection in Guangdong- Hong Kong- Macao Greater Bay Area", The Chinese Institute of Applied Jurisprudence, 2019, Vol.6.

Hong Kong and Macao.

There are mainly three prominent shortcomings regarding to intellectual property rights cooperation in the greater bay area. First, there is no long-term coordination mechanism and communication platform for intellectual property rights among three regions. Although there is an framework for inter-governmental cooperation between Guangdong, Hong Kong and Macao, there is no entity with execution force and binding force to undertake the specific implementation and operation under the agreement framework. Although Guangdong, Hong Kong and Macao have signed relevant cooperation agreements and established special cooperation platforms (Guangdong, Hong Kong and Macao task forces, Guangdong and Macao working groups), there is no platform for long-term planning and implementation specialized in intellectual property cooperation between Guangdong and Hong Kong and Macao.⁶ The Hong Kong and Macao governments enjoy a high degree of autonomy and legislative power, so the mainland government often needs to spend large amount of effort and time on specific cooperation issues with Hong Kong and Macao, but it may not be able to reach effective agreements.⁷ Especially when it comes to specific disputes over intellectual property rights, it is often difficult for the enforcement agencies of the three places, such as the market supervision administration and the intellectual property court, to effectively coordinate and negotiate.⁸

⁶ Economic Work Committee of the Standing Committee of Shenzhen Municipal People's Congress, "Thematic Report on Intellectual Property Rights Cooperation Mechanism in the Guangdong-Hong Kong-Macao Greater Bay Area", October 2019.

⁷ Chunxin Lu, "Intellectual property coordination mechanism in the construction of a legal business environment in the Guangdong-Hong Kong-Macao Greater Bay Area", April, 2018, Academic Research Magazine.

⁸ Economic Work Committee of the Standing Committee of Shenzhen Municipal People's Congress, "Thematic Report on Intellectual Property Rights Cooperation Mechanism in the Guangdong-Hong Kong-Macao Greater Bay Area", October 2019.

Moreover, the standards of intellectual property protection rules vary greatly among three regions. Mainland has not reached to the same level of intellectual property standards that Hong Kong and Macao have applied. Hong Kong and Macao have established and improved relatively strict intellectual property protection systems, and there are significant differences with the mainland in terms of filing standards, rules of evidence, standards of proof, standards of law enforcement and standards of penalty for intellectual property infringement. For instance, all copyright and trademark infringements in Hong Kong are criminal offenses, regardless of the seriousness of the cases.⁹ A system of punitive damages is adopted to carry out both criminal and civil penalties on the possession and use of infringing products for commercial purposes.¹⁰ In terms of infringement or copyright, Macao not only defines direct infringement of copyright as a crime, but also defines indirect infringement of copyright such as manufacture ,import, deletion or alteration as a crime, and the crackdown on infringement of copyright is more severe.¹¹ In addition, all intellectual property cases will be investigated and collected by the Customs and criminal charges will be filed to the court.¹² In terms of the judgment standard, Hong Kong and Macao impose heavier legal penalties on those with serious circumstances. For example, the maximum penalty for copyright infringement in Hong Kong is five years' imprisonment as well as confiscation of proceeds of crime and a fine of \$500,000.¹³

⁹ Intellectual Property Department of the Government of the Hong Kong Special Administrative Region of the People's Republic of China, "Hong Kong Intellectual Property Law", https://www.ipd.gov.hk/sc/intellectual_property/ip_laws.htm

¹⁰ Ibid.

¹¹ Imprensa Oficial, Governo da Regiao Administrativa Especial de Macau, "Macau Intellectual Property Law", <https://www.io.gov.mo/cn/entities/admpub/rec/121300>.

¹² Economic Work Committee of the Standing Committee of Shenzhen Municipal People's Congress, "Thematic Report on Intellectual Property Rights Cooperation Mechanism in the Guangdong-Hong Kong-Macao Greater Bay Area", October 2019.

¹³ Ibid.

On the contrary, there are also criminal penalties for intellectual property infringement in Mainland, though the definition is not clear and hard to operate, which makes it difficult to pursue criminal responsibility for infringement.¹⁴ In Shenzhen, one of the nine Mainland cities of the Greater Bay Area, more than 90% of the criminal cases of suspected infringement by Shenzhen market supervision administration bureau failed to realize criminal accountability;¹⁵ The compensation amount is relatively low and the standard is not uniform.¹⁶ Also the majority of tort cases mainly use the discretionary compensation standard when determining the compensation, resulting in many infringed enterprises "win the lawsuit and lose the market".¹⁷ From the examples above, it is not hard to conclude that the standards and rules of intellectual property protection in Guangdong, Hong Kong, Macao are quite different, which makes it difficult to recognize and enforce the judgment results of intellectual property rights infringement cases.

Last but not the least, the difference of law enforcement system between Mainland, Hong Kong and Macao has brought obstacles to the cooperation of intellectual property rights protection agencies especially when it comes to the disputed cases that require a joint law enforcement of three regions. . On one hand, the protection of intellectual property rights in Hong Kong and Macao adopts a single-track system, and the law enforcement is mainly undertaken by the customs. The obligee can bring a civil lawsuit through the court, or request the customs to carry out criminal law enforcement for the

14 Economic Work Committee of the Standing Committee of Shenzhen Municipal People's Congress, "Thematic Report on Intellectual Property Rights Cooperation Mechanism in the Guangdong-Hong Kong-Macao Greater Bay Area", October 2019.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

infringement.¹⁸ The Hong Kong Customs and Excise Department is solely responsible for the enforcement of intellectual property law in Hong Kong, including the investigation of complaints of suspected infringement of trademarks, copyrights and false statements, and the execution of all criminal work related to infringement of intellectual property rights.¹⁹ There are copyright and trademark investigation bureau and customs task force in the customs, which is mainly for retailers.²⁰ On the other hand, Mainland has a dual system of administrative law enforcement and judicial protection. Administrative departments such as market supervision, customs and judicial departments such as public security, courts and procuratorates perform their respective duties.²¹ In the current practice of cross sector collaborative law enforcement in the mainland, due to the lack of a unified dispatching platform of Law enforcement command, various departments are not smoothly connected in specific intellectual property cases. Therefore, the effect of law enforcement has always been criticized. According to a survey of enterprise's opinion on patent administrative enforcement in the Greater Bay Area, 38% of enterprises think that the enforcement is weak, while 33% of enterprises think that the speed of settling the case is too slow, while 29% of the enterprises think that the administrative decision is difficult to implement.²² It shows that a large number of enterprises have negative attitude on the efficiency and quality of patent administrative enforcement in the Greater Bay Area.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid

²² Economic Work Committee of the Standing Committee of Shenzhen Municipal People's Congress, "Thematic Report on Intellectual Property Rights Cooperation Mechanism in the Guangdong-Hong Kong-Macao Greater Bay Area", October 2019.

History/Background

History of the Guangdong-Hong Kong-Macao Greater Bay Area

The Guangdong-Hong Kong-Macao Greater Bay Area has only existed as a political and administrative entity for a short time. There are five steps which the Greater Bay Area was planned and established following the timeline. In March 2016, the *outline of the 13th Five Year Plan for the national economic and social development of the people's Republic of China* was officially released, which clearly stated to promote the construction of the major cooperation platform of Guangdong, Hong Kong and Macao bay area and trans provincial area. In the same month, the Chinese State Council issued the guiding opinions on deepening regional cooperation in the Pearl River Delta, explicitly requiring Guangzhou city and Shenzhen city to work together with Hong Kong and Macao to build a world-class city cluster.²³ On March 5, 2017, the development plan for the Guangdong-Hong Kong-Macao Greater Bay Area city cluster was written into Premier Li Keqiang's government working report for the first time.²⁴ On July 1, 2017, Chinese President Xi Jinping attended the signing ceremony of the framework agreement on 'Deepening Guangdong-Hong Kong-Macao Cooperation and Promoting the Construction of the Greater Bay Area'. The agreement was formulated by the four sides of the National Development and Reform Commission, the Guangdong Provincial People's Government, the Hongkong Special Administrative Region Government and the Macao Special Administrative Region Government. The signing of the agreement marks the formal establishment of the Chinese Greater

²³ Central People's Government of the People's Republic of China, "Guidelines of the State Council on Deepening Pearl River Delta Regional Cooperation", March 15, 2016, http://www.gov.cn/zhengce/content/2016-03/15/content_5053647.htm.

²⁴ The Xinhua News Agency, "2017 Government Working Report", March 16, 2017, http://www.xinhuanet.com/politics/2017lh/2017-03/16/c_1120638890.htm.

Bay Area in the history. On August 15, 2018, the Guangdong-Hong Kong-Macao Greater Bay Area construction leading group held its first plenary meeting in Beijing. Han Zheng, member of the Standing Committee of the Political Bureau of the Communist Party of China Central Committee and Vice Premier of the State Council, was appointed the team leader while Hong Kong chief executive Carrie Lam and Macao chief executive Fernando Chui Sai On were designated as members of the group.²⁵ This is the first time that the chief executive of Hong Kong and Macao has been incorporated into the Chinese central decision-making body.

Development Background of Intellectual Property Cooperation in Guangdong-Hong Kong-Macao Greater Bay Area

The special situation of Guangdong, Hong Kong and Macao has imposed a major impact on the intellectual property cooperation. After the return of Hong Kong and Macao to China, China has implemented the policy of "one country, two systems" for Hong Kong and Macao. Hong Kong and Macao have kept the original system unchanged for 50 years. Therefore, Hong Kong and Macao have implemented the original legal systems including legislation, justice and administrative enforcement inherited from the Great Britain and Portugal. "One country, two systems" requires that under the premise of "One China", the main body of the country adheres to the socialist system, while Hong Kong and Macao maintain the original capitalist system. Article 32 of China's Constitution stipulates that special administrative regions shall be set up in Hong Kong and Macao, and that Hong Kong and Macao shall be given a high degree of autonomy.²⁶ Article 2 of the "Basic Law of the Hong Kong Special

²⁵ Central People's Government of the People's Republic of China, "Han Zheng chaired the plenary meeting of the Guangdong-Hong Kong-Macao Greater Bay Area construction leading group", August 15, 2018, http://www.gov.cn/guowuyuan/2018-08/15/content_5314122.htm.

²⁶ Central People's Government of the People's Republic of China, "Constitution of the People's Republic of China",

Administrative Region of the people's Republic of China” and the “Basic Law of the Macao Special Administrative Region of the people's Republic of China” clearly grants the two regions with executive, legislative and independent judicial power and the power of final adjudication.^{27 28} Under the circumstance, Guangdong, Hong Kong and Macao are authorized by the Constitution and the Basic Law respectively, forming a unique phenomenon of "one country, two institutional systems, three legal systems" pattern.

Due to the special practical features of Guangdong, Hong Kong and Macao mentioned above, the three regions have not yet formulated a unified intellectual property legal system applicable to the Greater Bay Area. Thus, cooperation can only be coordinated by signing cooperative protocols. The two most significant of those efforts have been the “Mainland and Hong Kong/ Macao Closer Economic Partnership Arrangement” (CEPA) framework and the specific requirements on intellectual property rights under the *Outline Development Plan of the Guangdong--Hong Kong-Macao Greater Bay Area*.

Mainland China reached an agreement named “Mainland and Hong Kong/ Macao Closer Economic Partnership Arrangement” with both Hong Kong and Macao in 2003. CEPA stipulates three regions to strengthen closer economic and trade ties by reducing the trade barriers and inter-government regulation measures. Chinese central authority hoped the mature market economy of Hong Kong and Macao to inject vitality and thus improve competitiveness for the Mainland enterprises in the financial industry and service industry. Since CEPA, the economic and trade exchanges between

http://www.gov.cn/guoqing/2018-03/22/content_5276318.htm.

²⁷ Hong kong Special Administrative Region of the People’s Republic of China, “Basic Law of the Hong Kong Special Administrative Region”, <https://www.basiclaw.gov.hk/pda/tc/basiclawtext/index.html>.

²⁸ Macao Special Administrative Region of the People’s Republic of China, “Basic Law of the Macao Special Administrative Region”, https://bo.io.gov.mo/bo/i/1999/leibasica/index_cn.asp.

the Mainland, especially Guangdong Province which is geographically adjacent to Hong Kong and Macao, and Hong Kong and Macao have become increasingly close. Taking Hong Kong as example, in 2017, the import and export volume of service trade between the Guangdong and Hong Kong accounted for about half of the total import and export volume of service trade of Guangdong Province.²⁹ By the end of 2017, Guangdong had approved more than 150,000 Hong Kong-invested enterprises with a total investment of more than \$270 billion.³⁰ Nevertheless, disputes in the field of intellectual property rights in Guangdong, Hong Kong, and Macao has shown an explosive growth trend along with the deepening economic cooperation.³¹ From 2009 to 2016, according to the judicial protection of intellectual property in Chinese courts and relevant data from the Guangdong court network, the number of civil cases involving intellectual property rights of Hong Kong and Macao handled by courts of Guangdong Province at all levels increased from 109 pieces in 2015, 403 pieces in 2016 to 968 in 2017 and 1,514 in 2018.³²

The increasing number of legal disputes over intellectual property rights in the development of the Guangdong-Hong Kong-Macao Greater Bay Area reflects the shortcomings of the intellectual property legal system in the area. Without a sound intellectual property rights protection mechanism, the Greater Bay Area will not be able to provide high-quality legal business environment to attract and protect investors and thus to achieve a truly international science and innovation platform. It becomes

²⁹ Central People's Government of the People's Republic of China, "Guangdong and Hong Kong deepen economic and trade cooperation", July 13, 2018, http://www.gov.cn/xinwen/2018-07/13/content_5306047.htm

³⁰ Ibid.

³¹ Ao Mei, "The Conflict of Intellectual Property Law in Guangdong-Hong Kong-Macao Greater Bay Area and Its Solution", January 2020, *China Business And Market*, Vol.34.

³² Ibid.

an urgent task for the government of three sides to strengthen the coordination mechanism of intellectual property protection.

In recent years, Guangdong, Hong Kong and Macao have done some cross-regional work on intellectual property protection under framework of CEPA. For example, the Hong Kong Customs and Guangdong Customs regularly report information on Hong Kong-related infringement cases for each other on a monthly basis, and promptly report information on important cases they have found.³³ Specifically, between November 2017 and May 2018, the Customs of Guangdong Province and the Customs of Hong Kong launched joint law enforcement operations to crack down infringing goods and infringing goods related to the 2018 FIFA World Cup exported from Mainland to Hong Kong via Guangdong ports. After the two operations, Hong Kong Custom seized 44 cases involving nearly 220,000 pieces of infringing goods with a total value of about HK \$ 13.83 million.³⁴ Although the cooperation between Guangdong and Hong Kong in the field of intellectual property rights has become more and more close in this way, such measures are only "point-to-point", "case to case" at the level of policy or law enforcement, which cannot solve the sustainable problem of differences in intellectual property laws between Guangdong, Hong Kong and Macao. In other words, CEPA only provides negotiating platform for three regions other than formulating an effective cooperation legal system which is unconditionally recognized by three parties.

Another essential effort of the three regions regarding intellectual property cooperation is the

³³ Intellectual Property Department of the Hong Kong Special Administrative Region of the People's Republic of China, "Progress in intellectual property exchange and cooperation between Guangdong and Hong Kong", August, 2018, https://www.ipd.gov.hk/sc/pub_press/press_releases/2018/Accomplishment_SC.pdf.

³⁴ Ibid.

special taskforces on intellectual property protection. The taskforces are divided into Guangdong-Hong Kong group and Guangdong-Macao group, which consist of experts and government officials from Guangdong intellectual property office, Hong Kong intellectual property department and Macao intellectual property department operating under the theoretical framework of CEPA.³⁵ The taskforces are responsible for exploring the enhancement opportunity of the Greater Bay Area intellectual property protection and integration.³⁶ What is more, the taskforces frequently hold the Greater Bay Area intellectual property seminar and invite intellectual property experts and scholars over the world to discuss intellectual property cooperation and to explore the innovation of intellectual property system and mechanism under the background of the Greater Bay Area. There are some successful experience of the taskforces. For example, in 2017, with the support of the Guangdong-Hong Kong intellectual property protection taskforce, Guangdong trademark association helped Hong Kong-invested enterprises successfully apply for recognition of 92 famous trademarks of Guangdong Province, which opening up a new path for intellectual property cooperation in the Greater Bay Area.³⁷

The most influential policy of intellectual property rights protection cooperation between Guangdong, Hong Kong and Macao after CEPA is the *Outline Development Plan of the Guangdong-Hong Kong-Macao Greater Bay Area(Plan)* issued by the CPC central committee and the State Council on February 18, 2019. According to the Plan, one of the strategic positioning of the Guangdong-Hong Kong-Macao Greater Bay Area is to establish it as a globally influential international innovation and

³⁵ Hongchao Chen, "Exploring a new path for intellectual property governance in the Guangdong-Hong Kong-Macao Bay Area", July, 2018, New Economy Magazine.

³⁶ Ibid.

³⁷ Ibid.

technology hub. The Plan calls for the Greater Bay Area to build as open regional collaborative innovation community and create a high-level scientific and technological innovation carrier and platform, and thus optimize the regional innovation environment. As an important support for the new development of modern science and technology, intellectual property is bound to play an important role in the development of the Greater Bay Area. The Plan also calls for strengthening the protection and application of intellectual property rights in the Greater Bay Area, and promoting diversified ways to resolve intellectual property disputes.³⁸ At the same time, it is necessary to constantly coordinate and improve the legal system of intellectual property in order to provide a good environment and rule of law for scientific and technological innovation in the area. It is emphasized to comprehensively strengthen the cooperation between Guangdong, Hong Kong and Macao in areas such as intellectual property protection.³⁹

The promulgation of the Plan signifies that the Chinese central government has seen the potential of the Greater Bay Area for further investment and innovation, and has put forward higher requirements for intellectual property rights cooperation in the region. After the Plan was released, the local governments of Guangdong, Hong Kong and Macao responded immediately. In order to further implement the central planning requirements and to promote the Bay Area intellectual property service coordination system, the original Guangdong Province Intellectual Property Trade EXPO was then upgraded to the Guangdong-Hong Kong-Macao Greater Bay Area Intellectual Property

³⁸ Central People's Government of the People's Republic of China, "*Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area*" February 18, 2019, http://www.gov.cn/zhengce/2019-02/18/content_5366593.htm#1

³⁹ Ibid.

Trade EXPO organized and held mutually by Guangdong Intellectual Property Bureau, Hong Kong Intellectual Property Department and Macao Economic Bureau. The hosts co-determined that it will be a three days event of once a year.⁴⁰ According to the statistics released on the closing ceremony of 2019 Guangdong Intellectual Property Trade EXPO, the total number of visitor of the 2019 Guangdong-Hong Kong-Macao Greater Bay Area Intellectual Property Trade EXPO reached 22,600, with 302 exhibitors with an increase of 26.4% over last year.⁴¹ The number of visitors and the scale of exhibition were also highest in the history compared to its predecessor. Moreover, during the three-days exhibition, through intellectual property trade exhibition as well as intellectual property auctions, a total of 10.1 billion yuan of intellectual property cooperation intention transfers were generated and it was an increase of 12.47% compared to previous EXPO.⁴² In addition, the total value of patent and trademark transactions reached 1.486 billion yuan, an increase of 42.61% over last year. According to the types of intellectual property rights, the trading volume of patents and trademarks is 933 million yuan and 553 million yuan respectively.⁴³

Except cross-regional works, local government also formulates and enacts policies and administrative orders to improve the intellectual property protection. In 2018, Guangdong provincial committee and government issued a administrative order called *action plan on strengthening intellectual property protection and promoting high-quality economic development*. This plan requires

⁴⁰ Guangdong-Hong Kong-Macao Greater Bay Area Intellectual Property Trade EXPO, "Overview of IP EXPO", <https://www.gdipexpo.com/about/conferenceoverview>.

⁴¹ Chinese Science News, "2019 Guangdong-Hong Kong-Macao Greater Bay Area Intellectual Property Trade EXPO in Guangzhou", November 14, 2019, <http://news.sciencenet.cn/htmlnews/2019/11/432678.shtm>.

⁴² Ibid.

⁴³ Ibid.

multiple government departments such as intellectual property bureau, department of commerce, bureau of finance, custom, import and export bureau to work closely together to promote the cooperation of intellectual property finance and transaction operation, deepen the cooperation between Guangdong, Hong Kong and Macao, and strive to build Guangdong, Hong Kong and Macao into a regional intellectual property transaction center with international influence.⁴⁴

There is another effort from Guangdong government. In July 2019, the *three-year action plan of Guangdong Province for promoting the construction of the Guangdong-Hong Kong-Macao Greater Bay Area (2018-2020)* was promulgated, in which article 10, article 12, article 16 and article 17 set out clear plans and requirements for the intellectual property field in the Mainland of the Greater Bay Area.⁴⁵ Article 10 stipulates that by 2020, the number of invention patents per 10,000 people in the greater bay area should reach 2.6.⁴⁶ Article 16 demands Guangdong intellectual property bureau, provincial department of justice, provincial department of commerce and provincial courts shall take the lead in establishing the intellectual property information exchange mechanism and information sharing platform in the Greater Bay Area.⁴⁷

In addition, the municipal government is also trying to explore intellectual property rights cooperation in the Greater Bay Area. In December 2019, the Huangpu district and Guangzhou special development zone, which both belong to Guangzhou city Guangdong Province, launched the measures

⁴⁴ Yiran Yin, "strengthen the development of the intellectual property financial system to serve the innovative development of the guangdong-hong kong-macao greater bay area", July 2019, China Invention&Patent, Vol.16

⁴⁵ People's Government of Guangdong Province, "three-year action plan for Guangdong Province to promote the construction of Guangdong-Hong Kong-Macao Greater Bay Area (2018-2020)", July, 2019, http://www.gd.gov.cn/gdywdt/gdyw/content/post_2530521.html

⁴⁶ Ibid.

⁴⁷ Ibid.

for promoting the mutual recognition of intellectual property rights between Guangdong, Hong Kong and Macao in Guangzhou Huangpu district. The content includes that an initial capital award of 200,000 yuan shall be given to service agencies established by Hong Kong and Macao residents who have worked on intellectual property services for more than one year;⁴⁸ enterprises engaged in intellectual property arbitration, mediation, litigation and other activities in Hong Kong and Macao can receive 50% of the arbitration fee subsidy and up to 1 million yuan in lawyer fees subsidy;⁴⁹ enterprises through Hong Kong and Macao intellectual property rights for asset securitization financing can be in accordance with the actual financing amount of 3% of the annual interest rate subsidies.⁵⁰

The promulgation of the above-mentioned government administrative orders and documents is the historical effort of the Mainland, Hong Kong and Macao governments to improve the circulation of elements in the Greater Bay Area, optimize the business environment, and improve the intellectual property coordination system of the three regions so as to better construct the area into an international science and technology innovation platform.

Policy Proposal

The policy proposes that a Guangdong-Hong Kong-Macao Greater Bay Area Intellectual Property Rights Protection Coordination Center(Center) needs to be established. The goal of this proposal is to ensure that the total number of PCT (Patent Cooperation Treaty) international patent application in the Greater Bay Area will reach 50,000, and the total number of authorized invention patents which

⁴⁸ People's Daily, "Guangzhou explores a new mechanism for intellectual property protection in the Greater Bay Area", December 10, 2019, http://www.xinhuanet.com/fortune/2019-12/10/c_1125327477.htm

⁴⁹ Ibid.

⁵⁰ Ibid.

include trademark application and registration will reach 700,000 by the year of 2025. Besides, with the establishment of the Center, the examination cycle of invention patents will be reduced to about 14 months on average from the previous 22.5 months which is the Chinese national level of invention patents examine cycle.⁵¹

The Intellectual Property Protection Coordination Center of Guangdong Hong Kong and Macao Greater Bay Area has three functions. First, it is granted administrative power to provide intellectual property services as a government agency. Services include trademark registration, patent examination, and integrated circuit layout design registration. Since the Center is empowered by the Chinese State Intellectual Property Office, it will be given the right to accept and verify the PCT patents application in the Greater Bay Area. In addition, the Center will be given the mutual recognition of intellectual property registration covering the three regions. Mutual recognition means that once a patent is applied in the Center and has passed relevant examination and verification, it will be recognized and immediately used in Guangdong, Hong Kong and Macao. This means that applicants will not have to make multiple trips to the three places to separately apply for and obtain intellectual property certification.

The second function of the Center is to resolve disputes over intellectual property rights in the Greater Bay Area. This is mainly achieved through the establishment of Guangdong, Hong Kong and Macao intellectual property arbitration center as a subsidiary body of the Intellectual Property

⁵¹ All-China Federation of Industry and Commerce, "Shen Chang Yu: The average examination cycle of invention patents will reduce to 16 months on average in future four years." April 26,2019, http://www.acfic.org.cn/ddgh/bwzc/201904/t20190426_120592.html.

Protection Center. Referees of each case will be chosen from arbitration committee which is composed of intellectual property lawyers and experts from Guangdong, Hong Kong and Macao. The referee of the arbitration center will sign a four-year contract with the center and receive relevant certificates. The fees paid to the referee will be borne by the parties and not by the centre. The arbitration center can accept disputes over copyrights, trademarks and other intellectual property related issues . The arbitration committee also provide consulting service on intellectual property rights As the same as the mutual recognition of registration, the judgment result of the arbitration center has the mutual recognition of the final decision. It means that the arbitration results generated here can be used as legal basis in Guangdong, Hong Kong and Macao and take immediate effect. It should be noted that the arbitration center is different from the People's court with its three characteristics. The jurisdiction of the arbitration institution over the case is based on the joint authorization of both parties. Without arbitration, the arbitration institution cannot accept the case.⁵² In addition, the referees of the arbitration are jointly selected by the parties or appointed by the arbitration center. Their composition is based on the choice of the parties, while the composition of the trial tribunal is designated by the people's court and the parties have no right to question about the tribunal.⁵³ Secondly, the arbitration will be subject to one final decision according to law. Once the award is made by the arbitration tribunal, it shall have legal effect, and the parties concerned cannot appeal, while the parties may appeal to the people's court at the next higher level if they are not satisfied with the judgment of the

⁵² The Central People's Government of the People's Republic of China, "Chinese Arbitration System", April 30, 2006, http://www.gov.cn/test/2006-04/30/content_271831.htm

⁵³ Ibid.

court of first instance.⁵⁴ These arbitration settings are based on the current arbitration law of the People's Republic of China.

Last but not the least, the center will be entrusted with the function of joint law enforcement with local law enforcement agencies in three regions. The center has no direct law enforcement power, however it can provide relevant information and evidence to local law enforcement agencies to carry out law enforcement work of relevant cases. The result of local law enforcement agencies will be reported to the center. The center will then register the case according to the results of law enforcement, cancel or grant the rights of relevant intellectual property.

The establishment of the Guangdong-Hong Kong-Macao Greater Bay Area Intellectual Property Protection Coordination Center requires several administrative processes as well as administrative document as reference.

Initially, the Center shall be initiated by the Guangdong Provincial government and reach consensus through consultation with the Hong Kong and Macao Special Administrative Region government. Then, the proposal should be submitted by the three regional government to the Greater Bay Area leading group which belongs to the China State Council. Based on the proposal, Guangdong-Hong Kong-Macao Greater Bay Area Leading Group shall appoint the State Intellectual Property Bureau to take the lead in the study and propose the final proposal of establishing the Guangdong-Hong Kong-Macao Greater Bay Area Intellectual Property Rights Protection Coordination Center. The final proposal shall be submitted by the State Intellectual Property Office to the Central Leading Group for Deepening

⁵⁴ Ibid.

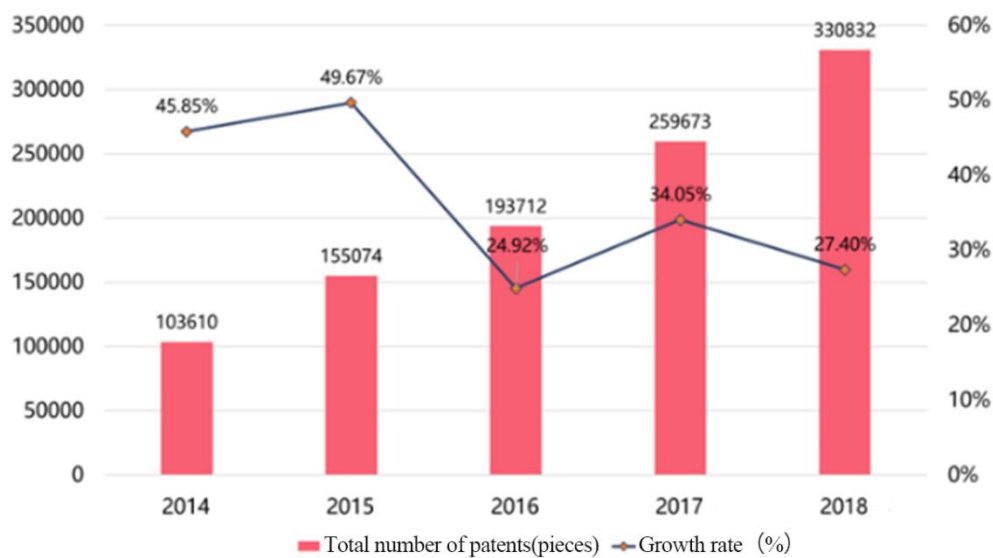
Reform for deliberation and final decision-making. Finally, according to the final decision made by the Central Leading Group for Deepening Reform, State Intellectual Property Office sign an agreement with the Guangdong Provincial government, the Hong Kong Special Administrative Region government and the Macao Special Administrative Region government on the establishment of the Guangdong-Hong Kong-Macao Greater Bay Area Intellectual Property Protection Coordination Center. Meanwhile, the *outline development plan of the Guangdong-Hong Kong-Macao Greater Bay Area*, issued by the CPC Central Committee and the State Council in 2019, should be seen as the administrative guideline and support for this policy as it clearly points out the requirement and target of constructing intellectual property cooperation mechanism between Guangdong, Hong Kong and Macao three regions in order to strengthen intellectual property protection in the Greater Bay Area.

Policy Analysis

Imbalance Development of Intellectual Property

This policy is aiming to solve the imbalanced situation of intellectual property development in the Guangdong-Hong Kong-Macao Greater Bay Area. From the internal analysis of the Greater Bay Area, despite the number of total patent applications being very large, the nine mainland cities in the Guangdong Pearl River Delta accounted for more than 90% of the total number in the Greater Bay Area while Hong Kong and Macao accounted for the remaining 10%.⁵⁵ Among them, Shenzhen, Guangzhou, Dongguan three east coast cities of the Bay Area accounted for nearly 70% of the total number of patent applications.

⁵⁵ Chun xin Lu, "Research on collaborative mechanism of intellectual property innovation in Guangdong-Hong Kong-Macao Greater Bay Area", June, 2019, China Invention&Patent, Vol.16



Total invention patents and growth rate of Guangdong-Hong Kong - Macau Greater Bay Area

Figure 1.⁵⁶

According to the Innovation and Development of Guangdong-Hong Kong-Macao Greater Bay Area 2019 report, the total number of invention patents on the East Bank of the Pearl River is nearly 620,000, but the annual growth rate is slightly lower than that from 2013 to 2017.⁵⁷ The total number of invention patents on the West Bank of Bay Area has increased significantly in the past five years, with an average annual growth rate of 51.23%, but there is still a big gap between the West Bank and the East Bank in terms of the invention patent number. The total number of invention patents in Hong Kong and Macao increased at an average annual growth rate of 7.84%, but it is still far lower than that in the East bank and the West Bank of the Pearl River.⁵⁸

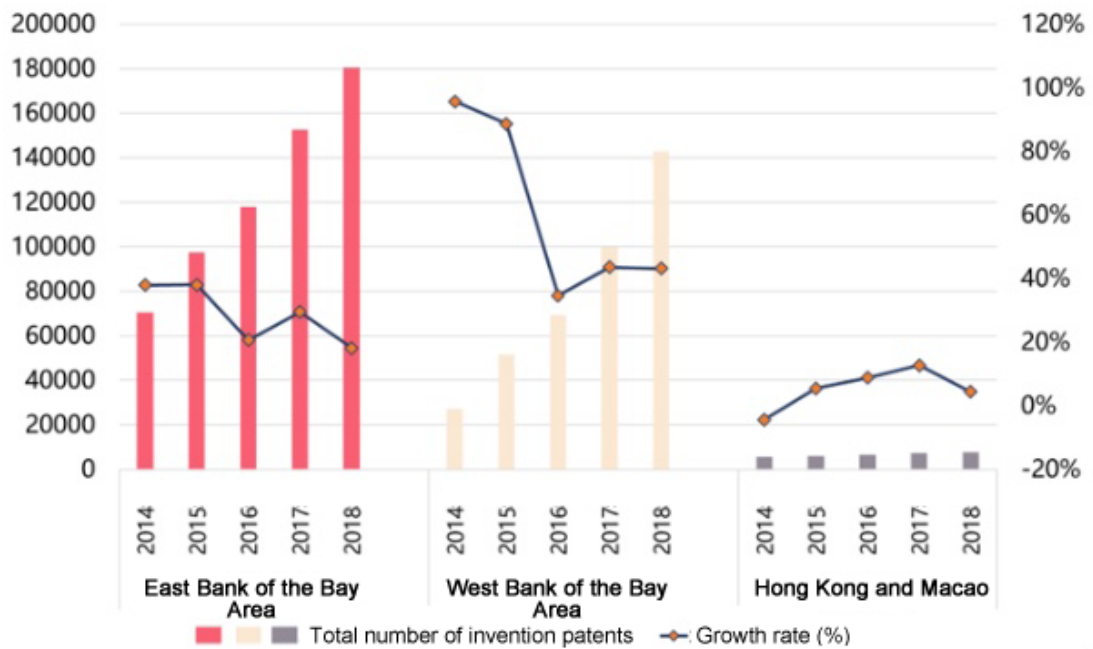
⁵⁶ People.cn, "Guangdong-Hong Kong-Macao Greater Bay Area Collaborative Innovation Development Report", November 24, 2019, <http://gd.people.com.cn/n2/2019/1124/c123932-33571191.html>

⁵⁷ Ibid.

⁵⁸ Ibid.



Figure 2. Geographic Map of Guangdong-Hong Kong-Macao Greater Bay Area⁵⁹



Total Number of Invention Patents and Growth Rate of Guangdong-Hong Kong-Macao Greater Bay Area

⁵⁹ Ibid.

Figure 3.⁶⁰

In addition to the total number of patent inventions, there is also a gap in the quality of patent applications between the East and the West of the Bay Area. Based on the analysis of PCT patents, from 2013 to 2017, the number of PCT patents in the East Bank of Guangdong-Hong-Kong-Macao Bay Area had prominent lead than its counterpart. The number of PCT patents in Hong Kong and Macao is relatively small, with an average annual number of less than 1100. In 2013 and 2014, there was a negative growth.⁶¹

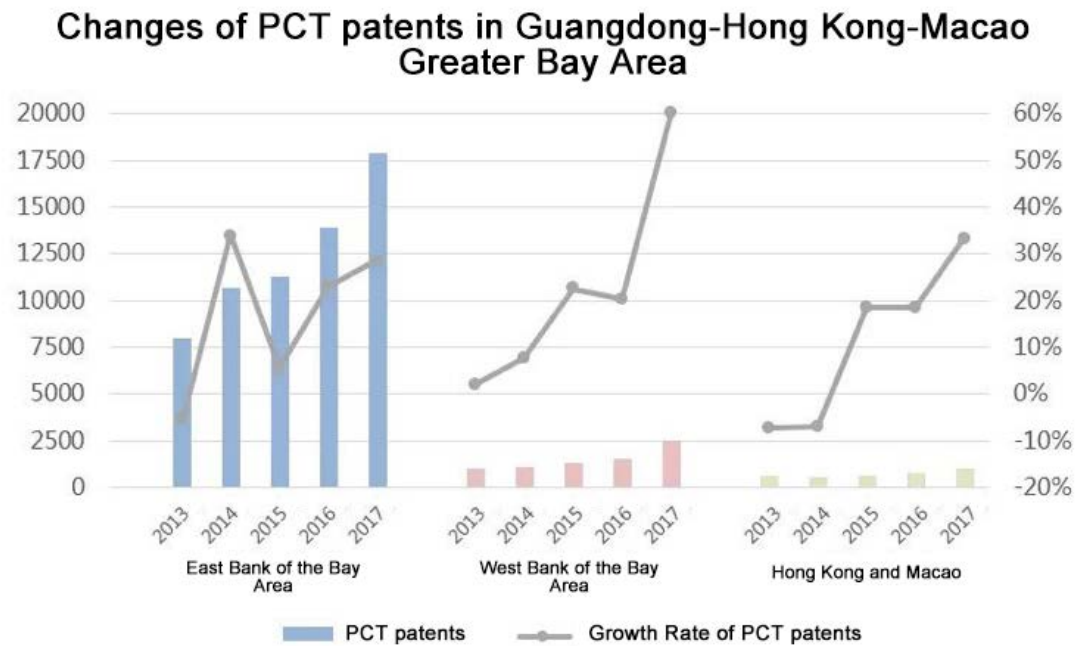


Figure 4.⁶²

The annual compound growth rate of PCT patent in Figure 5 can directly reflect the highest level

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Ibid.

of intellectual property between cities and the potential of intellectual property development.

Compound Annual Growth Rate of PTC in Guangdong-Hong Kong-Macao Greater Bay Area, 2013-2017

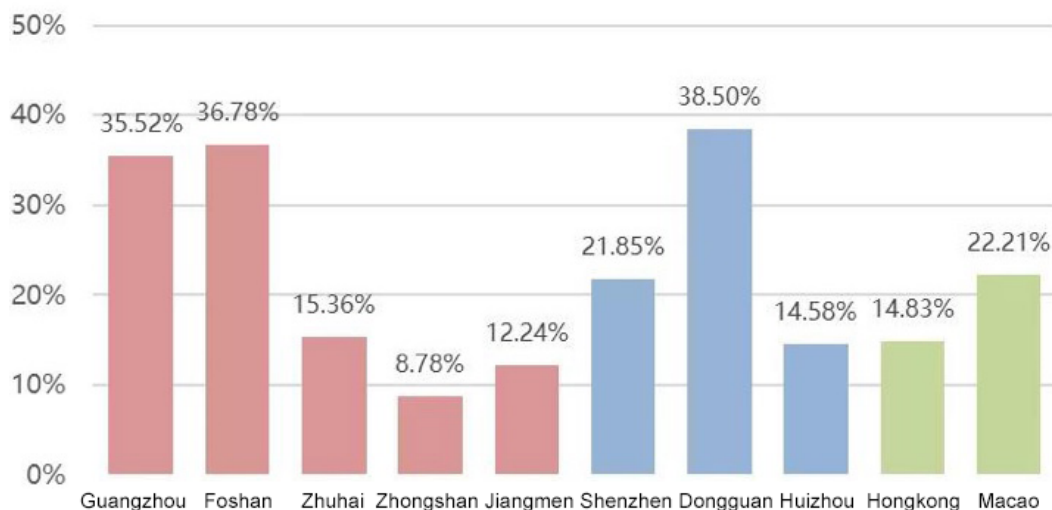


Figure 5.⁶³

From the figures and data above, it can be concluded that although the geographical location is very close, the level of intellectual property development between cities in the Bay Area is very uneven. This policy has played a key role in normalizing the intellectual property industry in the area. A platform is created for sustainable cooperation between three places. By cooperating through this platform, government officials and industry-related person from Mainland now can easily exchange ideas and development ideology about the industry with Hong Kong and Macao. More importantly, Mainland can improve its intellectual property protection system by learning from Hong Kong and Macao though the process. West bank cities, especially Zhaoqing and Jiangmen are still in start-up period of their intellectual property development. Hong Kong and Macao's standards and settings are

⁶³ Ibid.

the excellent reference for Zhaoqing and Jiangmen. The overall quality of intellectual property industry will be raised. It includes administrative efficiency, compensation standard, judicial standard, etc.

Arbitration Center

The arbitration center is a key point in the policy. Arbitration cannot substitute judicial proceedings, but it is a perfect supplement. Arbitration has several advantages over judicial litigation. First of all, arbitration is flexible. This is reflected in the fact that the parties can choose their own arbitration referees, arbitration language, and legal basis.⁶⁴ Secondly, arbitration has high efficiency due to the system it applies. A system of a single and final award will be practised for arbitration. If a party applies for arbitration to an arbitration commission or institutes an action in a people's court regarding the same dispute after an arbitration award has been made, the arbitration commission or the people's court will not accept the case.⁶⁵ This system avoids the loss of interest caused by the repeated appeals which lead to the dispute can not be resolved. In addition, compared with court decisions, arbitration results are more easily recognized and enforced in other countries. According to New York Convention on the recognition and enforcement of foreign arbitral awards, contracting states will recognize and enforce the arbitral awards made within the territory of the other contracting states.⁶⁶ There are more than 150 countries including China have joined the Convention. Finally, arbitration has strong confidentiality. Most intellectual property disputes involve their own research

⁶⁴ Ministry of Commerce of the People's Republic of China, "Intellectual Property Rights Arbitration", http://ipr.mofcom.gov.cn/hwwq_2/intro/intro/Arbitration/Arbitration.html

⁶⁵ Standing Committee of the National People's Congress, "Order of the President of the People's Republic of China", Aug 31, 1994.

⁶⁶ United Nation, "Convention of the Recognition and Enforcement of Foreign Arbitration Awards", 1958, <https://www.un.org/zh/documents/treaty/files/UNCITRAL-1958-2.shtml>.

and development and related intellectual property business secrets, so non-disclosure information is the best choice. Unless agreed by the parties, the arbitration procedure and the arbitration award are generally closed to public.⁶⁷ This is conducive to protect the personal information, trade secrets and even reputation of both parties.

The *Outline Development Plan of the Greater Bay Area* clearly points out that it is necessary to provide high-quality arbitration and mediation services for the area.⁶⁸ Because of the advantages of the arbitration, the arbitration center will become a great platform for dispute resolution. From the perspective of enterprises, litigation and arbitration have their own advantages and disadvantages. Therefore, the establishment of diversified dispute resolution mechanism can meet the differentiated requirements of enterprises.

This policy could also reduce the cost of patent applicant. In 2016, the Ministry of Finance and the National Development and Reform Commission jointly issued the administrative Circular on *Measures for Reduction of Patent Fees*.⁶⁹ This is also the basis for China's Current State Intellectual Property Office to set fees for patent applications in China. As the Center is a subordinate organization of the State Intellectual Property Office, the State Intellectual Property Office can authorize continuing fee relief for PCT patents applied in the Guangdong, Hong Kong-Macao Intellectual Property Protection Center. The State Intellectual Property Office can issue an announcement in accordance with the *Measures*

⁶⁷ Ministry of Commerce of the People's Republic of China, "Intellectual Property Rights Arbitration", http://ipr.mofcom.gov.cn/hwwq_2/intro/intro/Arbitration/Arbitration.html

⁶⁸ Central People's Government of the Republic of China, "*Outline Development Plan of Guangdong-Hong Kong-Macao Geater Bay Area*", February 18, 2019, http://www.gov.cn/zhengce/2019-02/18/content_5366593.htm#1.

⁶⁹ Central People's Government of the People's Republic of China, "*Notice on the issuance of "Measures of Reducing Patent Fee"*", August, 2016, http://www.gov.cn/xinwen/2016-08/04/content_5097534.htm

for Reduction of Patent Fees and stipulate that once the application has finally passed the PCT certification, the applicant or unit will receive 50% of the total application fee reduction. In addition to attracting new start-ups to invest, by reducing the PCT patent application fees, such preferential policies can also attract more international high-tech enterprises and individuals. In this way, the total number of PCT applications in the Greater Bay Area could reach 50,000 or more by 2025.

Experience from European Union and United States

To a certain extent, the establishment of the Intellectual Property Protection Center has broken through the differences among the three legal systems, which is reflected in the policy feature of mutual recognition learned from European Union and United States.

The mutual recognition of policies draws on the single patent system of the European Union. The European Union has adopted various means to promote the integration of the patent system in Europe. The European Patent Convention, which came into force in 1977, established the European Patent Organization - European Patent Office. In terms of procedures, it allowed the patentee of the European Community member states to apply to the European Patent Office for the regional patent recognized by all European Union countries.⁷⁰ According to the statistics report of the world's top five intellectual property offices, in 2017, the number of patents granted by the European Patent Office increased by 10%, and the number of patent applications increased by nearly 4%.⁷¹ Similarly, after the patent applicant of Guangdong, Hong Kong and Macao submits the application to the Greater Bay Area

⁷⁰ Yuwei Wang, Yue Yuan, Yu Zheng, Yan Wang, "Discussion on Patent System Conflict and Resolution in Guangdong-Hong Kong-Macao Greater Bay Area", 2019, *The Legal System Construction of Guangdong-Hong Kong-Macao Greater Bay Area*, Page341.

⁷¹ State Intellectual Property Office of China, "Statistics Report of the World's Five Intellectual Property Office", 2017, <http://www.sipo.gov.cn/docs/2019-05/20190528164250969239.pdf>.

Intellectual Property Protection Center, the authorization obtained by the applicant will take effect at the same time in the three places and be jointly protected by the laws of the three places. This measure not only simplifies patent application process, but also improves working efficiency. On one hand, applicants can also reduce travel expenses as now they do not need to make multiple round-trips for separate but same processes. On the other hand, working efficiency will be improved when less same-content applications appear. At the same time, the integrated patent system is also conducive to the unified protection and supervision of patent rights. It helps to avoid the malicious preemptive behavior caused by the asynchronous patent applications in three places.⁷²

The key to the mutual recognition of intellectual property is to unify some key concepts in patent law, trademark law and copyright law in order to reach a unified interpretation of mutual recognition.⁷³ Therefore, the Center needs to organize intellectual property experts and legal experts in three places to carry out this work as soon as possible.

In addition, the policy also refers to the regional model of the United States to resolve inter-regional legal conflicts, namely the model law. At the subject level, the model law is not formulated by the State or authorized institutions of the State, but by scholars or expert groups outside the non state organs.⁷⁴ At the designated procedure level, the requirements of the model law making procedure are

⁷² Yuwei Wang, Yue Yuan, Yu Zheng, Yan Wang, "Discussion on Patent System Conflict and Resolution in Guangdong-Hong Kong-Macao Greater Bay Area", 2019, "The Legal System Construction of Guangdong-Hong Kong-Macao Greater Bay Area" Page341.

⁷³ Chunxin Lu, "Intellectual property rights coordination mechanism in the construction of a legalized business environment in Guangdong, Hong Kong, Macao Greater Bay Area", Academic Research, 2018 Vol.7

⁷⁴ Zhengmin Xu, Zehua Feng, "The Experience of American Bay Area Construction", 2014, The Legal System Construction of Guangdong-Hong Kong-Macao Greater Bay Area, Page203.

not as strict as the laws and regulations formulated by the State, and it has more flexibility.⁷⁵ In terms of effectiveness, its core function is to serve as a model and template for legislation. If the legislature has the right to adopt the draft model law, the law will have legal effect and legal enforcement.⁷⁶ In other words, the enactment of the model law will promote the legislative subjects in different jurisdictions to accept the draft model law or similar draft model law, so as to promote the original conflict of laws and regulations tend to be coordinated and unified.⁷⁷ For example, the United States coordinated the problems in the New York Bay Area by adopting the model law draft formulated by the Regional Plan Association of New York. Once the model law is adopted by the government, it plays an important role in the unity and coordination of the legal system between different cities in the New York Bay Area.⁷⁸ Based on the successful experience, an intellectual property advisory committee, as subcommittee of the Center, composed of experts as well as intellectual property scholars from Guangdong, Hong Kong and Macao, needs to be found. On behalf of the Intellectual Property Coordination Protection Center, the Intellectual Property Advisory Committee regularly solicits proposals and suggestions from social organizations, companies and individuals on intellectual property rights in the Great Bay Area. Then it studies and puts forward draft model laws based on the proposals. This model law is only for reference and has no mandatory legal effect. On the basis of the model law, the governments of Guangdong, Hong Kong and Macao can be flexible and implement the same or similar intellectual property legal system.

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Tao Zeng, "Comparative Study of Model Laws", 2004, Wuhan University.

⁷⁸ Zhengmin Xu, Zehua Feng, "The Experience of American Bay Area Construction", 2014, The Legal System Construction of Guangdong-Hong Kong-Macao Greater Bay Area, Page204.

What is more, the United States Patent and Trademark Office's (USPTO) diverse and technological management methods can also be learned and adopted by the Center. The United States Patent and Trademark Office's strategic plan for fiscal 2014-2018 identifies optimizing patent quality and shortening patent licensing time as the main objectives of the strategy.⁷⁹ To that end, in 2017, USPTO launched a full version of PatentsView (www.patentsview.org). This is a web-based visualization platform with search, map view, comparison tool, and summary view functions.⁸⁰ Users can analyze the patent data in the past 40 years, including the inventor, the organization, address and all patent activities.⁸¹ PatentsView is benefit from using cutting-edge machine learning and database engineering methods and tools. For example, an algorithm developed in conjunction with the University of Massachusetts at Amherst uses techniques to identify unique individuals potentially patenting under the same name. If two people named John Smith file a patent, the algorithm takes multiple datapoints into account to determine if they are the same person. Information from PatentsView can also be used to examine trends in patent investment such as a report looking at women investors specifically.⁸² In this way, according to the statistics report, in fiscal year 2017, the total patent application review cycle used by USPTO patent examiners decreased by 1.1 months to 24.2 months.⁸³ Also, although annual patent filings in America have risen by 2.7% over the past five years, the backlog of unexamined patent

⁷⁹ State Intellectual Property Office of China, "Statistics Report of the World's Five Intellectual Property Office", 2017, <http://www.sipo.gov.cn/docs/2019-05/20190528164250969239.pdf>.

⁸⁰ American Institution For Research, "PatentView:Patent Data Exploration Platform", <https://www.air.org/project/patentsview-patent-data-exploration-platform>

⁸¹ Ibid.

⁸² Ibid.

⁸³ State Intellectual Property Office of China, "Statistics Report of the World's Five Intellectual Property Office", 2017, <http://www.sipo.gov.cn/docs/2019-05/20190528164250969239.pdf>.

applications has fallen by 2% to 526,579 cases.⁸⁴ As the case has already proved, if the Guangdong-Hong Kong-Macao Intellectual Property Rights Protection Center can adopt the same or similar advanced technological method in the field of works, it is believed that patent review cycle of the Center will have a significant 4-5months decrease from the previous 22 months to 17-18 months on average.

Political Analysis

Small and medium-sized enterprises are one of the important stakeholders of this policy. China has a large number of small and medium-sized enterprises, especially in the Pearl River Delta, where Guangdong Hong Kong Macao Bay area is located. However, according to a report on intellectual property utilization of small and medium-sized enterprises in China.⁸⁵ The number of enterprises with their own registered trademarks only accounts for 40.24% of the total. Enterprises with more than five invention patents account for 12% of the total, and enterprises with more than ten invention patents account for only 3.88% of the total⁸⁶. The report also shows data on patent transfer and licensing of small and medium-sized enterprises from 2013-2016. More than 90% of the enterprises have no patent transfer and patent license records, and the enterprises with more than 1 million yuan of expenditure for purchasing or obtaining patent license are less than 2% of the total enterprises. Nearly 50% of the enterprises have no such expenditure.⁸⁷ These data demonstrate that Chinese small and

⁸⁴ Ibid.

⁸⁵ Xiao Juan Qu, "Research On the improvement of intellectual property utilization of small medium-seized enterprises in China", 2016, Weinan Normal College, Vol31.

⁸⁶ Ibid.

⁸⁷ Ibid.

medium-sized enterprises lack the awareness of using intellectual property rights to protect their own innovation achievements, which leads to a large amount of waste on intellectual property and a weak position in domestic and foreign competition.

In this case, this policy should be welcomed by small and medium-sized enterprise in the Bay Area. The establishment of Intellectual Property Center constructs an intellectual property information service platform. By updating the intellectual property information timely, these enterprises can now quickly and systematically retrieve patent information and obtain consulting or arbitration services related to patent information. Enterprises can enhance their competitiveness by obtaining comprehensive information and formulating scientific and reasonable intellectual property strategy. South Korea provides a good case. Korea Intellectual Property Office's Customer Patent Map project provides patent services to small and medium-sized enterprises. In 2013, the Research and Development cost of small and medium-sized enterprises covered by the project increased by 24.6%, and the number of patent applications increased by 50.4%.⁸⁸

Xi Jinping, the leader of the Communist Party of China as well as the representative of Chinese Central Government, is another stakeholder of the policy. Xi has strong focus and determination on the intellectual property development. At the 19th National Congress of the Communist Party of China, Xi particularly emphasized that China should advocate a culture of innovation and therefore strengthen the creation, protection and application of intellectual property rights.⁸⁹ His attitude

⁸⁸ National Intellectual Property Administration, PRC, "Review on APEC intellectual property market of small and medium-sized enterprises operation guide", September 4, 2018, http://www.cnipa.gov.cn/gwyzscqzlszgzbjlxkybgs/zlyj_zlbgs/1131774.htm

⁸⁹ Central People's Government of the People's Republic of China, "Xi's Report on the 19th National Congress of the Communist Party of China", October 27, 2017, http://www.gov.cn/zhuanti/2017-10/27/content_5234876.htm

towards intellectual property innovation and protection has made it a key focus of government work. At the ninth meeting of the Central Comprehensively Deepening Reforms Commission, Xi presided and passed the administrative order of *Opinions on strengthening intellectual property rights protection*, which were issued and implemented by the General Offices of the CPC Central Committee and the State Council.⁹⁰ In addition, at the 2018 Boao Forum for Asia, Xi delivered a speech stressed that strengthening intellectual property protection is the most important part of improving the overall business environment and it is the biggest incentive to improve the competitiveness of the Chinese economy.⁹¹ Xi said that “China will strengthen intellectual property rights protection and explore a better system to protect the legitimate intellectual property rights of foreign companies in China and create a more attractive investment environment”.⁹² The establishment of the Intellectual Property Protection Center is a concrete and innovative practice to strengthen intellectual property protection. The policy follows President Xi’s development philosophy and it will surely be supported by the central government of China. Meanwhile, the implementation of this policy will reflect President Xi’s commitment of intellectual property rights.

Chinese government has then enacted new laws, regulations and policies such as publishing *Opinion on strengthening the protection of intellectual property rights and Implementation of the national intellectual property strategy plan(2014-2020)*. *Opinion on strengthening the protection of intellectual property rights* raises the punishment amount of infringement. The legal limit of

⁹⁰ Central People’s Government of the People’s Republic of China, “Xi Jinping presided the ninth meeting of the Central Comprehensively Deepening Reforms Commission”, July 24, 2019, http://www.gov.cn/xinwen/2019-07/24/content_5414669.htm.

⁹¹ People.cn, “Xi: Strengthening ipr protection is the most important part of improving the overall business system”, April, 11, 2018, <http://ip.people.com.cn/n1/2018/0411/c179663-29918754.html>

⁹² Ibid.

compensation for malicious trademark infringement has raised from 3 million yuan to 5 million yuan.⁹³ Those efforts have achieved positive results. In 2019, the patent examination cycle of high-value inventions in China was compressed to 17.3 months, and the user satisfaction index of patent examination quality was 84.8 points.⁹⁴ Moreover, intellectual property rights protection social satisfaction index in China rose from 64.63 in 2012 to 79.98 in 2019.⁹⁵ More and more foreign enterprises are investing in China because of the progress China has made on intellectual property rights protection. In 2017, 35,652 new foreign-invested enterprises were established in China, up 27.8 % year-on-year.⁹⁶ The improvement of intellectual property protection efficiency and quality plays an important role in creating a legalized business environment and attracting foreign investment. According to the annual global innovation index (GII) released jointly by the World Intellectual Property Organization and its partners, China's rank has risen from 43rd in 2010 to 14th in 2019, maintaining an upward momentum for four consecutive years.⁹⁷ The 2020 Business Environment Report released by the World Bank shows that China's overall business environment score is 77.9 points, increased 4.26 points from last year, and it has jumped to the 31st place in the global ranking, a 15 points increase from last year.⁹⁸ The implementation of this policy will further improve the satisfaction and international recognition on Chinese government intellectual property protection work as the policy

⁹³ People.cn, "Policy Interpretation", December 3, 2019, <http://politics.people.com.cn/n1/2019/1203/c1001-31486142.html>.

⁹⁴ People.cn, "China's progress in intellectual property rights protection is widely recognized", Feb 28, 2020, <http://ip.people.com.cn/n1/2020/0228/c179663-31609718.html>.

⁹⁵ Ibid.

⁹⁶ Central People's Government of the People's Republic of China, "The achievement China has made in intellectual property rights protection", April 19, 2018, http://www.gov.cn/xinwen/2018-04/19/content_5283866.htm

⁹⁷ People.cn, "China's progress in intellectual property rights protection is widely recognized", Feb 28, 2020, <http://ip.people.com.cn/n1/2020/0228/c179663-31609718.html>.

⁹⁸ Ibid.

aims to keep promoting administrative efficiency and effectiveness. As a result, more foreign capital investment will be attracted to China and to the Bay Area which is good for Chinese economy and the reputation of Chinese government.

This policy is conducive to the alignment of China's intellectual property protection with international standard. Although the Mainland and Hong Kong and Macao are all members of the agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), they adopt separate law systems.⁹⁹ In particular, Mainland China adopts socialist law system with Chinese characteristics; Hong Kong adopts common law system which is the same as the U.S and U.K.; Macao adopts civil law system.¹⁰⁰ Therefore, different standards and rules are applied on intellectual property in Mainland Hong Kong and Macao. Compared with Chinese standards and rules regarding to intellectual property rights protection, Hong Kong and Macao have a higher degree of international recognition and credibility especially when China is constantly criticized by American on this issue. Under the circumstance, this policy provides an opportunity for the different systems to integrate. By establishing the Center, field-related officials and experts are all assembled together. When it comes to the discussion of setting intellectual property standards and regulation methods, Mainland could learn from Hong Kong and Macao's good practices and experience. Then, by combining China's own characteristics, China can develop a system consistent with international rules to promote the international level and influence of China's overall intellectual property protection.

⁹⁹ Ao Mei, "Conflict of intellectual property laws and its solution in the Guangdong-Hong Kong-Macao Greater Bay Area", January 2020, China Business and Market, Vol.34.

¹⁰⁰ Zhongxing Wang, "Conflict and coordination between the Mainland and Hong Kong and Macao legal system", June, 2009, Zhongshan University, <https://www.sinoss.net/2010/0827/24503.html>.

Nevertheless, it is difficult to pass the legislative procedure for this policy. The establishment of the Center aims to unify the application, registration, examination, authorization, and dispute resolution of intellectual property in the Bay Area. It means that the intellectual property administrative licensing rights of originally local government departments will be unified into one institution. This process involves the release and transfer of administrative rights of local department which requires the three regional administrative licensing authority to make corresponding legislative authorization. Regard to this issue, the Mainland part can be authorized by the State Council, while Hong Kong and Macao are relatively complex as it requires the authorization of local Legislative Council due to the reason of a high degree of autonomy. Hong Kong in particular, where relations with Mainland are sensitive, requires a lot of hard work and time to grant such mandate. In the past few years, there have been a number of ideas and statements in Hong Kong that advocate independence and local separatism.¹⁰¹ The opposition in the Legislative Council of Hong Kong cleverly uses the rules of procedure of the Council to obstruct and delay the deliberation of the Legislative Council on the matters concerning Mainland China in order to achieve the purpose of restraining the government's administration.¹⁰² For example, in 2017, the Hong Kong government and the Mainland government jointly proposed the policy of "One place, Two inspections" regard to the issue of Guangzhou-Shenzhen-Hong Kong High-Speed Train custom inspection. The policy was planned and formulated in 2014, but was barely passed by the Hong Kong Legislative Council until 2017.

Such a bold attempt to integrate the three legal systems may cause one's doubts. Some people 's

¹⁰¹ Zhaojia Liu, "The future of 'One Country Two Systems' in Hong Kong", March 17, 2020, Hong Kong Commercial Press.

¹⁰² Ibid.

distrust of China's political system will lead to further discussions on the establishment of this institution. Questions include the location of the Center, the superior authority as well as the potential corruption risk (if the Center is included into Chinese political system) are likely to raise from the Hong Kong and Macao opposition faction. Doubts are understandable and it should be taken into further deliberation until the three governments reach consensus.

Recommendation

Despite the fact that this proposal might encounter certain political obstacle such as the opposition from Hong Kong's Legislative Council, the feasibility of this policy is still high because the policy meets the common interests of several parties within the bay area.

Initially, enterprises in the Greater Bay Area have strong desire to the services that this policy provides. According to an intellectual property industry research, 86% enterprises need intellectual property legal consultation and evaluation services; 62% enterprises need patent information retrieval and analysis services; 57% companies need intellectual property strategy advising services.¹⁰³ It indicates that my proposal will be highly supported by the innovation enterprises in the bay area because policy offers a "service window" for them to deal with intellectual property issues.

In addition, this proposal will receive the attention and full support from the President Xi Jinping and the Party Central Committee. Protection of intellectual property rights has been on the agenda of Chinese government in recent years. The General Office of the CPC Central Committee and the State

¹⁰³ Economic Work Committee of the Standing Committee of Shenzhen Municipal People's Congress, "Thematic Report on Intellectual Property Rights Cooperation Mechanism in the Guangdong-Hong Kong-Macao Greater Bay Area", October 2019.

Council have issued a number of policies and administrative orders to promote the development of intellectual property. *Implementation of the national intellectual property strategy plan(2014-2020)* and *Opinions on strengthening intellectual property rights protection* issued in 2019 are the two best example of the efforts. The opinion marks three goals for intellectual property development in China. First, by 2025, China will further improve the arbitration mechanism on intellectual property disputes, and provide diversified and convenient intellectual property legal services.¹⁰⁴ Second, China will push forward the revision and improvement of criminal laws by raising the limit on legal compensation for infringements. The National People's Congress will discuss on lowering the criminal threshold for intellectual property rights infringement and increasing the severity of punishment.¹⁰⁵ Third, by completing those goals and measures, China's social satisfaction on intellectual property protection will reach and maintain at a high level.¹⁰⁶ It is 76.88 in 2018.¹⁰⁷ There is huge potential for improvement.

My proposal will make a great contribution to promoting the arbitration mechanism and raising the standards of intellectual property protection. It fits in the development ideology and plan of the Central Committee and the State Council.

Strengthening intellectual property rights protection means to create a good business environment in the Greater Bay Area. It is government's duty to provide for the general public an

¹⁰⁴ Central People's Government of the People's Republic of China, "The General Office and State Council issued 'opinions on strengthening intellectual property rights protection'", November 24, 2019, http://www.gov.cn/zhengce/2019-11/24/content_5455070.htm.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ Central People's Government of the People's Republic of China, "China's Intellectual Property Protection Social Satisfaction keeps improving", May 1, 2019, http://www.gov.cn/xinwen/2019-05/01/content_5388105.htm.

efficient and effective legal-based environment. Intellectual property is only one factor, but it is the embodiment of the international standard of the rule of law business environment. A leading agency is very necessary for governments and experts to take part in the field, so I hereby recommend this proposal.

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Major: International Relations [GPA 3.45, Cum Laude]

August 2015-May 2018

- Coursework: Economics of Globalization, Environment development and Global South, World Political Economy, China's Economy and Financial System,Politics of China, The East Asian Century
- Research Experience:
- **Education in the Third World Countries**, Environmental and Development in Global South
- **South China Sea Dispute**, The East Asian Century
- **Role of Money in U.S. Politics**, Money and Politics
- **Future trend of World Political Economy**

WORK EXPERIENCE

PWC

Shenzhen, China

Research Assistant for Transfer Pricing Tax Department

July 2017-August 2017

- Enroll in a transfer pricing tax project for Kerry Logistics Company
- Conducted large amount of document translation and meeting minutes

Green City Public Service Company

Shenzhen, China

Public Relationship Assistant

June 2018-August 2018

- Assist the company in various brand publicity copy writing and press release writing
- Assist in the planning and implementation of media communication, communication channels and platforms, interactive content and activities
- Assist the material packaging of new media platform and related articles writing and dissemination
- Assist in online advertising, media cooperation, business channel, partner development and business negotiation

China Commercial Lam LEE LAI Lawyers firm

Shenzhen, China

Paralegal

June 2015 –

August 2015

- Performed practice under Layer Wang
- Took charge of meeting minutes
- Reviewed assets of company before IPO

ACTIVITIES

China Development Student Think Tank

December 2016-February 2018

Secretary

- Recruited new crew and arranged work for each department
- Liaised between chairman of the department with the president of the organization
- Dealt with administrative work such as RSO application and examination, etc

Syracuse fencing association

September 2015-May 2017

Saber captain

- Organized the tournament, conducted daily practice for the team of Saber

Student Council of English Language Institute

September 2014-May 2015

Representative

- Planned activities including Thanksgiving dinner, Religious meeting, etc
- Communicated between the institution and student for requests and problems

Volunteer

- Volunteer teaching in Daliangshan, Sichuan

May 2014

- Infrastructure construction in Zhanjiang, Guangdong, China

June 2013

- Volunteer teaching in Guiding, Guizhou, China

May 2012