

Hong Kong: in search of the elusive hub

China's Western-facing financial centre wants to be crowned as the region's 'IP trading hub'. Its first challenge, says **Tom Phillips**, is to define exactly what it means...



At an IP conference in Hong Kong (HK) last December, the region's chief executive CY Leung told delegates of his administration's plan to make HK the "IP trading hub" of Asia.

This was a phrase the assembled lawyers and journalists would hear a lot more that week. Some of those listening, including yours truly, were generously flown out to hear the message under the hospitality of HK's efficient Trade Development Council (HKTDC) enlisted to promote Leung's plan.

The fact he and Tian Lipu, then head of the State Intellectual Property Office (SIPO), were speaking at all highlighted the importance IP held in HK's, but perhaps more importantly, China's state strategy.

This is a serious plan, driven by mandate from Beijing the month before (see box on right page). But what exactly is an IP trading hub?

We have heard this before, most notably from Singapore, which revealed its 'IP Hub Master Plan' in April 2013. Backed by \$100m in funding and with a few years' head start, it was certainly quicker to embrace IP. But as many in Asia realise, once China puts its weight behind something, it usually succeeds.

To further HK's cause, in March 2013 Leung created an IP working group of politicians, lawyers and those with influence and interest

in the IP market. Led by the secretary for commerce and economic development, Gregory So, the working group aims include: "enhancing our IP protection regime; supporting IP creation and exploitation;

"We have heard this before, most notably from Singapore, which revealed its 'IP Hub Master Plan' in April 2013. Backed by \$100m in funding and with a few years' head start, it is certainly the leader in its embrace of IP."

fostering IP intermediary services and manpower capacity, and pursuing promotion, education and external collaboration efforts."

In practical terms, the highlight so far has been an online trading platform (see box on

page 12), increased participation in the BIP Asia event and a commitment from SIPO to train HK patent examiners. Depending on the definition, it appears the region is some way off 'IP hub' status.

Central to the HK plan is an idea, more a belief, that because HK is one of the world's financial centres, it can do the same with IP.

"We have an eye for commerce. We have been very good at being the middlemen," says So, who lists HK's attributes for being *the* Asian IP hub. And it is an impressive list.

HK's many bankers, accountants and insurers can understand IP valuations; it has a common law system recognised across the world; it understands the Chinese environment and the Western way of doing business; English is taught in schools... Singapore has many of these attributes too so what's the difference? The HKTDC is keen to clarify its position in this regional bun fight. Ralph Chow, its director of product promotion, hands me a piece of paper showing how HK's patent, industrial design and trademark applications are greater than Singapore.

Is Singapore a direct competitor? "Singapore is strong in IP trading, especially in South East Asia," Chow admits. "But HK has the advantage of being on the doorstep of a major market. South China is one of the fastest developing places in the world."



And who could deny such statements? Huge infrastructure projects such as the 31-mile Hong Kong-Macau bridge and a new high speed rail link joining the region with Guangzhou, both scheduled to be running by 2015, are proof – if proof was needed – of this region's remarkable growth.

Others in the working group are more circumspect. Nicholas Brooke, an ex-pat who has lived in the city for 40 years, has seen his adopted city evolve from a strategic port into a strategic financial centre and 'special administrative region' of China. The property developer and self-confessed "man of many hats" sits on nearly a dozen boards and chairs the Hong Kong Science and Technology Parks, a mammoth 330,000 sq m R&D site built to attract inventors. The latest phase of the project includes building facilities for 'clean tech' and start-ups. It is projects like these that demonstrate HK's ability to wield enormous resources.

What Brooke sees is a city ideally poised to help companies with IP issues progress into mainland China. The working group is, he says, a project to coordinate the skills that already exist and focus them on IP.

He believes there is also a marketing challenge to overcome. "People wouldn't associate Hong Kong as a centre for IP excellence and there are others in the region

competing so one has to be realistic about one's ambitions," says Brooke.

The enforcement issue

The investment is impressive, but for HK to achieve its, as yet unclear, aims, it will need more than organisation, marketing and money.

A senior IP executive at one of the world's largest technology companies tells me he is not convinced by the 'trading hub' plan. The reason, he says, is a lack of enforcement in mainland China.

"In general, patents are the most valuable IP asset. For trading purposes you need two things: one, revenue of some kind – China is a great candidate for this, it's seeing huge development in tech and pharma; and two, reliable enforcement with reasonable damages – and this is a big problem for China," he says.

The largest patent award in China is so far less than \$50m. Currently patents are "not worth the risk or return" on enforcement. The working group is committed to alternative dispute resolution (ADR), but this senior exec urges the region to think big.

"Arbitration and mediation only work if parties have that intention," he says, adding that HK could succeed by following the model of the Eastern Texas courts in the US. The notorious patent-friendly forum gives quick

A powerful statement of intent

China's IP policy was included in the "Decision on Major Issues Concerning Comprehensively Deepening Reforms", adopted at the close of the Third Plenary Session of the 18th Communist Party of China Central Committee on 12 November, 2013.

The mandate was to, "Deepen science and technology system reform. Set up and complete a system that encourages innovation. Perfect a market-based system that encourages technological innovation. Strengthen intellectual property application and protection. Explore ways to set up intellectual-property courts. Break executive-leading and departmental segmentation, building a system where the market decides innovation program selection, resource allocation and result assessment. Improve the venture capital system, innovate business models and promote capitalisation and industrialisation, and scientific and technological achievements."

access to settlements while avoiding many of the stalling techniques used by big companies to slow down the process, such as disclosure abuse.

"HK and mainland China could adopt this and make HK a court for these disputes," he says. "HK has less suspicion, is English-speaking, is separate from the corruption perceived in the mainland and could be viewed as an even-handed forum. HK could be viewed as the honest broker and it would legitimise the Chinese patent system."

With such courts, the credibility of the patent system could take a "great leap" forward. "As soon as you have that, the marketplace follows," he says.

However, even with its huge resources, the chances of China and HK embarking down the court route is unlikely.

CK Kwang, senior partner at HK firm Sit, Fung, Kwong & Shum, leads the mediation and ADR effort within the working group. From his office above one of HK Island's many designer shopping malls, Kwang points out HK's long history of adapting to new scenarios. From the opium wars, through the Korean War, British rule and the booming financial centre of the 80s and 90s... each decade has brought something new for the people of HK.

Kwang is himself an experienced mediator and firmly believes the ADR route adopted by HK's plan – which draws on UNCITRAL instruments – is preferable to a court system.

"There is a trend emerging from the nature of IP disputes. In the US, dispute costs are very high and, because of the confidential nature of many disputes, it's not desirable to

IP trading platform

Hong Kong's (HK) chief executive CY Leung described the remodelling of HK as an IP hub as requiring the following: "enhancing our IP protection regime; supporting IP creation and exploitation; fostering IP intermediary services and manpower capacity; and, pursuing promotion, education and external collaboration efforts."

This includes the launch, or relaunch (it was originally conceived in 2011), of the Asia Intellectual Property Exchange (AIPE). The AIPE comprises around 20,000-30,000 registered patents from 21 'strategic partners', including universities and research centres.

Ralph Chow, director of product promotion at the Hong Kong Trade Development Council, says that in order to preserve quality, the project has proceeded cautiously.

"We want the IP to be trustworthy or be supported by foreign governments," he says. "They provide IP to be listed on the portal so they can match with manufacturers and other licensees."



"There is a small but growing IP community in HK at the moment. If you are the buyer, it's most important to know that you can protect and litigate your patents. The government is determined and things could grow very fast."

have this litigated in open court. ADRs are much less expensive. Mediation is low cost, low risk. Monetarily it makes sense."

The challenges with HK's IP project, he says, include the need for more tax treaties with other countries to increase incentives. He is less clear, as with others in the working group, on just how the IP trading hub will work in practice. But that there are "top-level decision makers" behind the plan is "very important".

The backing of senior government departments such as SIPO is a major reason why Transpacific IP is keeping a close eye on developments. The pan-Asian IP advisory company is the largest of its kind in Asia. Founded in 2004, it chose Singapore as a base because of its "IP hub" status (so says its website).

Billy Lam, vice president of business development at the company, says his HK work is mainly with universities. It is early days for HK, but all the same he is well aware that what China wants, China usually gets.

"There is a small but growing IP community in HK at the moment. If you are the buyer, it's most important to know that you can protect and litigate your patents. In coming years you will see more transition in Chinese patents. The government is determined and things could grow very fast."

Lam describes HK as a "unique" base for IP transactions because of its licensing and accounting credentials (those transferable skills once again).

Over the past 10 years China has been more focused on the number of patents for each enterprise, rather than the quality of those patents. But HK is looking at its own patent examiner system. The proposal could "could take a few years" he says. There is also a need for more education among HK's own market.

"SMEs in HK need some time to learn that they can file a patent to protect their invention," he says.

Many will agree that the region is adaptable and has a skilled workforce, but is this enough? Detail on what actual IP trading will take place and who will be involved, remains sketchy. But it is too soon to pass judgement, for one standout reason. It's the same reason that has seen HK prosper for hundreds of years. With one foot in the West and one in the East, it straddles the major economic power of Asia and the Western markets. As So, the working party leader, says, "We can give real reach into China." And whatever the details in the end, that might be enough.