



RIGHT PLACE, RIGHT TIME: NPES IN SINGAPORE

Transpacific IP is the leading NPE in Singapore, with offices and personnel in Taiwan, Hong Kong, Israel and the United States. CEO Guy Proulx goes into detail about the IP landscape in Singapore

It is contradictory but true to say that the role of NPEs in Singapore has both expanded and narrowed in recent years. It has expanded in that, as a politically and financially stable jurisdiction, Singapore has been an increasingly attractive host for intellectual assets and the NPEs that monetise them. The field of play for business, however, has narrowed.

In 2017, when IAM reported that Singapore was poised to “roll out the red carpet” for NPEs, we were living in a very different world – technologically, geopolitically and practically. Much has changed in the intervening years, and much of it to Singapore’s benefit.

Back then, the NPE business in Singapore was more diversified and often service oriented. Transpacific IP, for example, frequently assisted technology companies in building their portfolios, in moving assets between different Asian jurisdictions and in monetising their patents. As larger clients built more sophisticated and well-tooled internal teams, they became able to perform much of that work in house. As a result, we pivoted to a more straightforward NPE model. We buy patent portfolios, then keep and monetise them ourselves. Sometimes, this involves selling the portfolio, but our primary focus now is finding high-quality portfolios that we can monetise by filing patent infringement cases – primarily in the United States – against big targets.

Six years ago, the general patent outlook was bullish. More patents were being filed in Asia, there were more opportunities to acquire them and the entire Asia-Pacific region was moving toward



an IP-centric model – but in our space, times were changing, and we changed with them. As in-house technical expertise improved, affecting the external services business, the quality and availability of portfolios kept pace with that improvement.

Another change was the growth of litigation funding, which began in the United States but, recent years, has expanded globally in the IP sector. That has positively affected the capital restraints that we previously faced, so we saw an opportunity from a funding perspective and an increase in the quality of patent portfolios in the region. At the same time, Singapore’s policymakers were helping to make it an attractive IP destination.

Red carpet

I sat on the board of directors for the Intellectual Property Office of Singapore (IPOS) from 2010 to 2014. At that time, IPOS was laying a lot of groundwork to make Singapore an IP hub and to turn intellectual property into an integral part of the nation’s economy.

When I was on the IPOS finance subcommittee, we spoke a lot about what would drive people to build a patent portfolio Singapore or to move one there. One thought was financing – a securitisation model or some kind of IP funding model, which didn’t pan out quite as planned. But another aspect was tax structure, including how to make it more conducive for a patent holder or portfolio owner to be in Singapore. That was quite successful.

One of the things that we talked about was reducing withholding taxes both on payments sent out of Singapore and payments sent into Singapore, to a Singapore entity. There was a drive and a government agreement at that time to push forward on double taxation agreements (DTAs) and make an effort to reduce the withholding taxes on royalties and licence fees.

Traditionally, countries have applied a high percentage on withholding taxes on royalties and licence fees; for example, withholding was previously about 16% if a payment was made from South Korea to a Singaporean entity. In 2019, this was renegotiated down to 5% – a significant reduction. Singapore is continuing to work across the board to reduce the rates of various DTAs as they come up for renewal or renegotiation.

IPOS also achieved strong results through the training that it provides. IPOS has a very active training organisation through its IP Academy, which educates people on all aspects of intellectual

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property. In the patent context, it instructs on how to prosecute, maintain, evaluate and even monetise patent portfolios, including how to license and how the arbitration centre in Singapore can help. IPOS also places a lot of focus on trademarks and some on copyrights as well.

IPOS stood firmly behind the idea of rolling out the red carpet not just for NPEs, but for the IP sector as a whole. Then, of course, the whole world changed.

Impact of COVID-19

With the emergence of the COVID-19 pandemic, many things ground to a halt, but the pandemic did not affect the IP sector as much as it did most others. Lockdown measures (called the ‘circuit breaker’ in Singapore) shut down businesses that could not operate remotely, and the restrictions were in place for more than two months. Although they did not affect the IP sector directly, the courts’ progress was restricted and business in general was affected as each country in the Asia-Pacific region implemented its own health and safety policies.

At the height of the pandemic, some monetisation was reduced but the development of new projects continued, albeit at a slower pace. Travel restrictions, however, reshaped the Asia-Pacific region for NPEs. Hong Kong, previously a go-to location for banking, became virtually impossible to reach in person for almost three years.

As a result, we started transitioning some of Transpacific IP’s bank accounts out of Hong Kong and into Singapore, where the banks were opening and businesses were able to keep operating. Also, considering the know-your-customer requirements driven by both US and European regulations and requirements to know exactly who clients are, where



money comes from and where it's going, it became more practical to bank locally. Banks were accessible when air travel wasn't.

The tax situation also affected NPE decisions surrounding where to hold patent portfolios. The DTAs made opening Singaporean entities more sensible. An NPE in Singapore can do even better tax-wise than a US entity in some cases, assuming that payment is coming from overseas into the United States rather than just being paid within the United States. Certainty pays off within the United States; it's always better to have an entity there. But if another party wants to pay money to you from overseas, the many DTAs are making it more advantageous to have a Singaporean entity.

Current landscape

Start-ups have experienced a big push in Singapore, so a lot of innovation is going on among the many start-ups with good funding here. But there are also companies that don't quite make it and lose their funding. The funders end up holding a set of patents, essentially becoming NPEs themselves, and they want to do something about it – which they can do in Singapore. The same is true of other places in the Asia-Pacific region, but the tax consequences are often not as favourable as they are in Singapore.

In the banking context, Singapore is on par with the other Asia-Pacific financial centres. As far as the tax structure and the rule of law are concerned, Singapore is as good, if not better, than some other locations within Southeast Asia. Hong Kong is still a finance centre but, as a result of the pandemic and political unrest there, a lot of businesses have left Hong Kong. In our sector, we have seen many parties transition their banking from Hong Kong to Singapore.

Attention must also be paid to the increased geopolitical tensions in the Asia-Pacific region. China is looking to not only protect but to extend borders more strongly than it had in the past, causing growing concerns in Taiwan. At least a handful of patent holders in Taiwan

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have looked to divest or move their portfolios out of the country. While not the majority by any means, patent holders that are doing this tend to be highly funded, specific groups that have developed very robust portfolios in specific technologies and are somewhat concerned that those assets are sitting in Taiwan. Singapore has become a destination for some of those portfolios.

Another important aspect to note is the signing of the RCEP in 2020. The 15 signatory countries comprise the largest trading block in the world, covering 30% of the global population and 30% of global GDP. Intellectual property is an important component of the RCEP, and one in which Singapore has taken a significant role. This is a positive development for the recognition of intellectual property in general and the harmonisation of that recognition throughout the Asia-Pacific region.

Outlook

For NPEs, the future looks bright in Singapore. The country appears to be in the right place at the right time and with the right set of circumstances. Singapore has a stable government and consistent relationships in the Asia-Pacific region, including with China, and its planning for the future is robust and progressive. The country has a plan that covers the coming decades, and we see it as having a steady economy and being a secure place for many years to come.

The Singaporean government is doing great things for the country for intellectual property as a whole and is hospitable to NPE activities. Still, there are things about Singapore's IP community that those outside the region may not know.

The legal structure and community are both strong, and there are a lot of talented IP lawyers in Singapore in patent work and (even more so) on the trademark side. Lawyers and businesses in Singapore understand patents and how to build a portfolio. The government continues to look at intellectual property as a mainstay for the economy going forward by ingraining it in government planning.

The trademark bar is extremely well known within the Asia-Pacific region, and many groups and major corporations around the world handle their trademarks for the whole region in Singapore. In fact, trademark work was the foundation of the IP community here and was strong even before patents took off 15 years ago. The International Trademark Association conference, which was originally scheduled to be held in Singapore during the pandemic, was held in the country in the first half of 2023. There were over 7,000 attendees by some



accounts, and although it was focused on trademarks, a lot of patent practitioners and others in the IP world attended as well. This speaks to Singapore's growing role in intellectual property in the region.

However, the advantages of owning a patent portfolio in Singapore go unnoticed at times. Funders, even international funders, do not necessarily understand the tax ramifications in a jurisdiction that has been so progressive with DTAs or the strength of Singapore's relationships with other countries and the deep national support of a strong IP system.

The tools are in place, the training is effective and IPOS has made itself a regional player in the global IP office community. It has worked throughout the Asia-Pacific region to come up with ways to shorten the patent prosecution time for Southeast Asia-generated IP, where you might file a Singapore patent first, followed by the PCT and the worldwide options. The ability to open companies and structure businesses in Singapore is comparatively easy when considered

alongside others the region. These aspects are not necessarily widely known outside of Singapore.

The world has changed a lot since 2017, and the area of IP monetisation is no exception. Although many changes are not specific to NPEs, they have all made Singapore a more attractive place to build, own and monetise patent portfolios.

From a regional perspective, Singapore is the best place for an NPE to set up shop. When we at Transpacific IP talk to funders, family offices and others who are interested in building a patent portfolio, the moment we say that we would like to base it in Singapore, there are no more questions asked about location. When it comes to the confluence of intellectual property, finance and planning, Singapore is a safe harbour. **≡ IAM**

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