

PATENTLY LACKING: A CALL FOR SYSTEMIC REVIEW OF PHARMACEUTICAL LAW AND POLICY — A CASE STUDY OF HONG KONG

Bryan Mercurio * & *Daria Kim* **

ABSTRACT

This article offers preliminary findings into the pharmaceutical laws and policy of Hong Kong. Applying a framework approach to identifying the linkages between pharmaceutical patents and policy objectives in the areas of public health, medical innovation and pharmaceutical industry development, the article examines the pharmaceutical patent regime as an integrated system of patent and regulatory laws which govern pharmaceutical patents and products and explores the way such provisions operate at a complex intersection of policy objectives, priorities and mandates. The study reveals contradictions in the way in which the provisions are implemented within Hong Kong's pharmaceutical patent system as well as certain discrepancies between the system and broader governmental agendas. In so doing, the article demonstrates the importance of clear policy objectives in intellectual property, innovation and pharmaceutical industry as well as the need for sector specific empirical studies and an integrated approach for

* Professor, Associate Dean (Research) and Vice Chancellor's Outstanding Fellow of the Faculty of Law, The Chinese University of Hong Kong. The research was supported by the Hong Kong General Research Fund (GRF) (No. CUHK450012) as part of a project entitled, "Intellectual Property Rights and the Pharmaceutical Industry: Evaluating Hong Kong's Regulatory Framework".

** Senior Research Assistant at The Chinese University of Hong Kong under the GRF project "Intellectual Property Rights and the Pharmaceutical Industry: Evaluating Hong Kong's Regulatory Framework".

establishing a better functioning pharmaceutical patent regime. The perspectives and considerations revealed in the analysis are of interest and applicable to other jurisdictions in that they provide a framework for policy and law makers to implement pharmaceutical legal and regulatory provisions in a more coherent and systematic manner conducive to national priorities and balancing interests and needs of the stakeholders and the populace.

KEYWORDS: *pharmaceutical patents, pharmaceutical patent policy, comparative intellectual property law*