



**FÉDÉRATION INTERNATIONALE DES CONSEILS EN PROPRIÉTÉ INDUSTRIELLE
COMMISSION D'ÉTUDE ET DE TRAVAIL (CET)**

CET WORKING DOCUMENT

SUBJECT:	Summary of Patent Attorney and Patent Agent Qualifications and of Professional Confidentiality/Privilege Obligations	DATE:	January 11, 2010
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Executive Summary

Data for EPO and EU Countries re Qualifications and Confidentiality/Privilege Obligations

CET 6 compiled the necessary data for EPO and EU and non-European countries based upon the responses received from various FICPI members in those countries.

A summary for 22 European countries¹ and 33 non-European countries was prepared.

The summary was submitted to WIPO on August 29, 2009, including four remarks on considerations concerning confidentiality and privilege.

¹ including Syria, since the information for Syria was received after the previous summaries had been sent to WIPO for the non-EU and non-EPO countries



**SUMMARY OF PATENT ATTORNEY AND PATENT AGENT QUALIFICATIONS
AND OF
PROFESSIONAL CONFIDENTIALITY/PRIVILEGE OBLIGATIONS
EUROPEAN COUNTRIES**

1. AUSTRIA
2. CYPRUS
3. CZECH REPUBLIC
4. FRANCE
5. FINLAND
6. GERMANY
7. GREECE
8. IRELAND
9. ITALY
10. JERSEY
11. LATVIA
12. LUXEMBOURG
13. MONACO
14. NORWAY
15. POLAND
16. PORTUGAL
17. ROMANIA
18. SERBIA
19. SPAIN
20. SWEDEN
21. SWITZERLAND
22. SYRIA
23. UNITED KINGDOM

25.8.2009 /RB



AUSTRIA

1. Patent Attorney

Austrian Patent Attorneys hold a 5-year university degree in engineering or natural sciences, are legally trained with a registered patent attorney for at least five years and have passed the patent bar exam.

2. Patent Agent

does not exist

3. Professional Confidentiality/Privilege

The Austrian Patent Attorney Act requires patent attorneys to keep all information received in their capacity as legal representative confidential. Additionally, patent attorneys have (just as attorneys-at-law) the right to refuse giving witness about confidential information before all courts and administrative authorities.

CYPRUS

1. Patent Attorney

Every Lawyer (attorney-at-Law) is a patent attorney or patent agent. In order to become a lawyer one has to have a law degree, one year chambers, and must pass the Cyprus Bar exams.

2. Patent Agent

same as Patent Attorney

3. Professional Confidentiality/Privilege

Communications between client and lawyers (and therefore patent and trademark attorneys) have privilege.

CZECH REPUBLIC

1. Patent Attorney

Patent attorneys have a university degree, at least three years of professional practice and have passed a professional examination.

2. Patent Agent

same as Patent Attorney



3. Professional Confidentiality/Privilege

Patent attorneys are obliged to maintain confidentiality on all facts about which they learned in connection with the provision of services. They may be relieved from this duty only by the client on the basis of a written statement, after the client's death or dissolution by the legal successor.

FRANCE

1. Patent Attorney

Patent attorneys have an engineering degree and a post-graduate degree in IP law from the CEIPI and have passed the qualifying examination organized by the French patent office.

Trademark attorneys hold a university degree in law and a post-graduate degree in IP law and have passed a qualifying examination organized by the French patent office .

In 2008, a new route for becoming patent or trademark attorney was implemented for engineers having the engineering degree + post graduate degree in IP law and for trademark lawyers having the university degree in law + the post-graduate degree in IP law. Those persons having at least 8 years of working experience in IP in their specific field (respectively patents or trademarks), can become patent or trademark attorneys without any real qualifying examination. Instead, these persons are merely heard by a jury which can only ask them questions relating to the code of conduct of IP attorneys and clarifying the context of their working experience in IP (but no question on the “merits” of this experience is allowed).

2. Patent Agent

same as Patent Attorney

3. Professional Confidentiality/Privilege

French Patent and trademark attorneys must follow a code of conduct and benefit from a privilege regarding attorney-client communication, similar to the one enjoyed by French barristers.

FINLAND

1. Patent Attorney

Patent attorneys or patent agents have an engineering degree and must prove experience in dealing with patent matters. There is no examination in order to qualify for the Register of Patent Agents, but it is necessary to apply in writing and to attach certified copies showing that you have the required education as well as a report on the experience gained in dealing with patent matters (for instance a testimonial given by an employer); also the number of cases (official actions, patent applications etc.) handled so far by the applicant must be indicated.

According to the rules of the Association of Finnish Patent Attorneys, you can become a member of the association - at the discretion of the association - if you have an appropriate university degree,



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you have been employed on a fulltime basis for at least six years and you are currently working professionally as an attorney in the IPR field.

2. Patent Agent

same as Patent Attorney

3. Professional Confidentiality/Privilege

The Association of Finnish Patent Attorneys has a code of ethics which stipulates that patent attorneys shall keep confidential information received from the principal in secrecy in accordance with good counseling principles.

Finnish Patent Attorneys - in contrast to Finnish lawyer IP advisors - do not enjoy privilege.

GERMANY

1. Patent Attorney

German Patent Attorneys have a university degree in engineering or natural sciences and practised in industry before being accepted for additional three years education which involves passing a legal training of two years with an established attorney. Additionally, law studies at a university must be undertaken as well as a training at the German PTO. Finally the patent bar exam must be passed.

2. Patent Agent

does not exist

3. Professional Confidentiality/Privilege

German Patent Attorneys are obliged to maintain professional secrecy. Additionally, patent attorneys have the right to refuse to give evidence for professional reasons.

GREECE

1. Patent Attorney

Only lawyers can practice on patent matters.

2. Patent Agent

see above



3. Professional Confidentiality/Privilege

With respect to 1., there is no code of conduct for non-lawyer IP advisors.

IRELAND

1. Patent Attorney

Irish Patent Attorneys have sat a Leaving Certificate Examination conducted by the Department of Education and have a knowledge of engineering, or chemistry, or physics (or such other scientific or technical subjects) of the standard of the first University examination in those subjects, or have passed any other equivalent examination. Also, patent attorneys must have fulfilled other requirements concerning knowledge of the law and practice of patents and have been employed for not less than three years in the office of a registered patent agent in the State, the United Kingdom or another member state of the European Community.

2. Patent Agent

same as Patent Attorney

3. Professional Confidentiality/Privilege

The Patents Act and Patent Agent Rules do not address this issue. However, the Controller of the Patents Office does have the power to suspend or remove an agent for "disgraceful conduct" and it is perhaps conceivable that a very serious breach of client confidentiality might be complained of under this heading.

The Irish Association of Patent and Trade Mark Attorneys (APTMA) - to which some, but not all IP attorneys are members - has an internal code of conduct requiring members to maintain client confidentiality.

ITALY

1. Patent Attorney

An IP Consultant has passed a qualification exam and holds a university degree. Also, he has attended a cycle of post-secondary studies relevant to the activity as industrial property consultant of three years or has at least two years of effective professional training within companies, offices, or the like.

2. Patent Agent



see above

3. Professional Confidentiality/Privilege

An industrial property consultant has the duty to keep the professional secret; also, according to the Code of Criminal Procedure, Italian IP consultants cannot be obliged to witness about what they have been aware because of their profession.

JERSEY

1. Patent Attorney

No qualifications separate from UK law exist.

LATVIA

1. Patent Attorney

Patent attorneys or patent agents have an academic or vocational higher education of the second level, at least three years of work experience in the field of industrial property protection and have passed a qualification examination.

2. Patent Agent

same as Patent Attorney

3. Professional Confidentiality/Privilege

There is no code of conduct applicable to patent attorneys so far. However, work on Latvian IP law is in progress, where it is planned to include provisions on confidentiality of attorney-client communications.

LUXEMBOURG

1. Patent Attorney

Patent attorneys hold a master degree in the legal or a technical field, have been trained during 12 months by a registered patent attorney and have passed the EQE (European Qualifying Examination). Also, a national examination relating to patent legislation and Benelux trademark and design legislation exists.

2. Patent Agent



same as Patent Attorney

3. Professional Confidentiality/Privilege

No specific code of conduct applies for patent attorneys. Patent attorneys are not bound by the specific codes of conduct applicable to attorneys at law.

MONACO

1. Patent Attorney

Any activity whatsoever which is to be carried out in Monaco by a non-Monaco citizen must be authorised by the Monaco Government. The activity of patent attorney or agent is not regulated in Monaco; however in order to deliver the authorisation to act in Monaco the Government will require in fact a law degree with a specialisation in Industrial Property, and preferably some professional experience in that field. They will also require that the patent attorney be registered as a European patent attorney/agent with the EPO.

2. Patent Agent

same as Patent Attorney

3. Professional Confidentiality/Privilege

There has been no authorisation issued to persons who are not lawyers (say engineers), so the common rules of confidentiality applicable to lawyers apply to all patent attorneys/agents in Monaco, as there is no specific rule governing such activity in Monaco as already mentioned.

NORWAY

1. Patent Attorney

There are no formal requirements for qualification as a patent attorney apart from being resident in Norway.

2. Patent Agent

same as Patent Attorney

3. Professional Confidentiality/Privilege

No code of conduct exists.



POLAND

1. Patent Attorney

A patent attorney in Poland has to have an education in Engineering or Science or Law Degree and must have passed an exam organized by the Polish Patent Office and the Polish Chamber of Patent Attorneys. Additionally he must have graduated in postgraduate studies in Intellectual Property Law and Practice organized by the Polish Patent Office.

2. Patent Agent

does not exist

3. Professional Confidentiality/Privilege

According to "The ethical standards for Patent Attorney" the Patent Attorney profession is a profession of public confidence and this context all communications between client and a Patent Attorney must be kept confidential.

PORTUGAL

1. Patent Attorney

In order to qualify as a Industrial Property Agent it is required to pass an examination and to have a degree in Law, Economics or Engineering.

2. Patent Agent

same as Patent Attorney

3. Professional Confidentiality/Privilege

There are no codes of conduct applicable to non-lawyers IP advisors. Members of the Portuguese Association (which membership is not mandatory) are bound by the statutes of the Association.

ROMANIA

1. Patent Attorney

The qualification as a patent attorney or patent agent is obtained by passing an exam with the Romanian patent office. A patent attorney possesses university level technical, scientific or legal qualification and has been practicing for at least 3 years in the industrial property field.

2. Patent Agent



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same as Patent Attorney

3. Professional Confidentiality/Privilege

A professional code of conduct exists which does not have any provisions regarding the attorney client privilege. There are provisions regarding the confidentiality agreement; any industrial property attorney is obliged to not disclose the information received from the client or referred to him only within the limits of the mandate.

SERBIA

1. Patent Attorney

Under Serbian Law, a registered patent attorney or agent has a law or an engineering degree. Also, patent agents must have passed an exam in the IP Office or have at least five years of work experience in the IP office.

2. Patent Agent

same as Patent Attorney

3. Professional Confidentiality/Privilege

The law on advocacy obliges lawyers to keep the client's matters confidential. There is no professional association of patent agents in Serbia which would have a Code of Conduct.

SPAIN

1. Patent Attorney

Industrial Property Agents hold a degree in an official subject, architecture or engineering and have passed an aptitude test.

2. Patent Agent

see above

3. Professional Confidentiality/Privilege

Upon registration in with the IP Registry, IP Agents promise to maintain professional secrets.

SWEDEN



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1. Patent Attorney

No qualification requirements for Patent Attorneys are set in Sweden.

2. Patent Agent

see above

3. Professional Confidentiality/Privilege

No code of conduct exists for persons acting as Patent Attorneys.

SWITZERLAND

1. Patent Attorney

At present, there is no qualification requirement for patent attorneys.

However, Switzerland is in the process of establishing a law on Patent Attorneys. The Parliament accepted the law in March 2009 and the deadline for filing a Referendum has expired on 9 July 2009 (no referendum was filed). The Swiss Institute of Intellectual Property is now in discussion with the Swiss Patent Attorney Associations to define the educational requirements and the content of the examination.

2. Patent Agent

see above

3. Professional Confidentiality/Privilege

As there is no requirement for national qualification up to now, there is no particular code of conduct.

The new Patent Attorney Law requires the patent attorneys to treat the clients information confidential. There is no enhanced right to withhold clients information if the courts ask to give such information.

SYRIA

1. Patent Attorney

There is no status of Patent Attorneys in Syria; not in accordance with the current law, and not with the new law (currently under drafting).

2. Patent Agent



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Patent agents were not previously identified as such, and their practice was part of the general practice of commerce. A new trademark law provides requirements for trademark agents, in particular a university qualification and practice at a private office. Identical requirements will be introduced to the new patent law.

3. Professional Confidentiality/Privilege

Neither the old and the new trademark law (as well as the new patent law) refer to a code of conduct; however, breach of confidence and disclosure of secret information are incriminated in the new patent law. Breach of trust, if committed by a patent agent, shall be subject to the general rules of civil law since it would be considered as a breach of contractual obligations.

UNITED KINGDOM

1. Patent Attorney

Any person can act at the UK Patent Office, but the titles "Patent Attorney" (which is synonymous with "Patent Agent") and "Registered Patent Attorney" (which is synonymous with "Registered Patent Agent") are reserved for those duly qualified, that is persons who have passed an examination.

2. Patent Agent

same as Patent Attorney

3. Professional Confidentiality/Privilege

The United Kingdom recognizes a strong privilege obligation for confidential communications between lawyers and their clients relating to the obtaining or giving of legal advice or assistance, and relating to existing or contemplated litigation.

The lawyer/client privilege has recently been extended to non-lawyer, IP professionals (registered UK patent and trademark attorneys and registered European patent attorneys), in respect of communications relevant to their fields of professional activity including the obtaining of protective rights for inventions, trademarks, etc., and including communications relating to the enforcement or validity of industrial property rights. These privileges do not extend to communications with patent or trademark attorneys outside their particular fields.

English law also recognizes foreign qualified lawyers on the same base as UK qualified lawyers and extends both legal and litigation privileges to their communications with their clients.



8/21/09

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OF
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FOR COUNTRIES OTHER THAN EUROPEAN & EPO COUNTRIES

Argentina
Australia
Brazil
Canada
China
Columbia
Cyprus
Ecuador
Egypt
Hong Kong
India
Iran
Japan
Jersey
Jordan
Kenya
Lebanon
Malaysia
Mexico
New Zealand
Nigeria
Pakistan
Peru
Philippines
Singapore
South Africa
South Korea
Taiwan
Thailand
United States
Venezuela
Vietnam



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ARGENTINA

1. Patent Attorney:

Any qualified lawyer.

2. Patent Agent:

Over 21, resident in Argentina, high school degree, attend a training course at PTO, pass PTO examination.

3. Professional Confidentiality/Privilege:

a. Patent Attorneys are required to maintain the attorney-client privilege and are not allowed to disclose any privileged information without the authorization of the client.

b. Patent Agents are required to maintain the confidentiality of all information received in the exercise of their profession.

4. Professional Association.

The most well known association representing intellectual property agents is the AAAPI (Argentine Association of Industrial Property Agents). All members must be patent agents.

The bylaws of the AAAPI establish that all members must rigorously maintain all professional secrets.

AUSTRALIA

1. Patent Attorney:

No legal qualifications are required. The applicant is required to have knowledge about professional conduct and all aspects of intellectual property law. The applicant is also required to have a degree or a diploma in the field of technology that contains potentially patentable subject matter. The applicant is also required to have at least 2 continuous years in searching, drafting patent specifications, filing and prosecuting patent applications in Australia and other countries and the provision of advice on interpretation, infringement and validity. The applicant is also required to be ordinarily resident in Australia.

2. Patent Agent:

Patent Agents are the same as patent attorneys.

3. Professional Confidentiality/Privilege:

Clients are entitled to claim privilege in relation to confidential communications with their



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patent attorneys and patent attorneys are required to respect such privilege.

4. Professional Association:

The Institute of Patent and Trademark attorneys of Australia (IPTA), has a code of conduct that applies to its members. Most patent attorneys are members of the IPTA. Members of the IPTA are required by the code of conduct to maintain the confidentiality of confidential information derived from or obtained on behalf of a client, and are not allowed to disclose such confidential information.

BRAZIL

1. Patent Attorney:

The term “patent attorney” is not used in Brazil. Any qualified lawyer with a law degree can represent his clients in the courts and before the National Institute of Industrial Property (INPI) in all intellectual property matters.

2. Patent Agent:

The term “patent agent” is not used in Brazil. Instead persons who have passed the examination organized by the INPI are qualified as industrial property agents and can represent their clients before the INPI on intellectual property matters. Industrial property agents must be over 18 years in age and must have full use of civil and political rights. Foreign persons living regularly in Brazil do not have to have full use of political rights to be able to qualify as industrial property agents.

3. Professional Confidentiality/Privilege:

The Ethics Code of the Brazilian Bar Association dictates that communications between lawyers and their clients are considered confidential and cannot be disclosed to third parties. The same rule applies to industrial property agents who are not qualified as lawyers.

CANADA

1. Patent Attorney:

Patent attorneys must have a law degree and must have 12 months of experience in Canadian patent law and practice, including the preparation and prosecution of patent applications, and must then pass a set of qualifying exams. The patent office is contemplating increasing the period of 12 months to 24 months.

2. Patent Agent:

A Patent Agent does not have a law degree but has to meet the other required qualifications



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as set out above for a patent attorney.

3. Professional Confidentiality/Privilege:

a. Patent Attorneys are required to respect the confidentiality of confidential client information and are subject to the law of privilege against disclosure of any such information.

b. Patent Agents are not subject to any specific codes of conduct applicable to professional confidentiality. While clients have an expectation of confidentiality, this is unlikely to be sufficient to protect the confidentiality of patent agent/client communications in any litigation.

CHINA

1. Patent Attorney:

No law degree is required. A patent attorney must have graduated from a physical or polytechnic university/college, must have been involved in technical work for at least 2 years, must have trained in a legal seminar and passed the national examination organized by the Chinese Patent Office.

2. Patent Agent:

Same as patent attorney.

3. Professional Confidentiality/Privilege:

There is no code of conduct or obligation of confidentiality applicable to non-lawyer patent attorneys in the context of confidential client communications. However, there is no obligation for patent attorneys to disclose their client communications to any court or any governmental authority.

COLUMBIA

1. Patent Attorney:

There are no qualification requirements for being a patent attorney. The profession is not regulated. Non-lawyer patent attorneys cannot represent foreign clients before the Columbia patent or trademark authorities.

2. Patent Agent:

Same as patent attorney.

3. Professional Confidentiality/Privilege:

There are no codes of conduct applicable to non-lawyer patent attorneys or patent agents. It appears that professional confidentiality is recognized for qualified lawyers.



[Being checked.]

CYPRUS

1. Patent Attorney:

Every lawyer is a patent attorney. Every lawyer has to have a law degree, has to have 1 year work in chambers, and has to have passed the Cyprus bar exams.

2. Patent Agent:

There are no non-lawyer patent agents.

3. Professional Confidentiality/Privilege:

Since all patent attorneys are lawyers, the same codes of conduct apply to patent attorneys to maintain the confidentiality of confidential client communications.

ECUADOR

1. Patent Attorney:

A patent attorney has to be a qualified lawyer.

2. Patent Agent:

A patent agent may only act through a qualified and registered lawyer.

3. Professional Confidentiality/Privilege:

a. It appears that since patent attorneys have to be qualified lawyers, they are subject to obligations of professional confidentiality in relation to client communications.

b. Since patent agents are required to act through a registered lawyer, this would provide a measure of professional confidentiality for communications through the registered lawyer with the client.

EGYPT

1. Patent Attorney:

Must have a law degree from a University and must be an Egyptian national.

2. Patent Agent:



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Must be a university graduate and an Egyptian national.

3. Professional Confidentiality/Privilege:

a. Patent Attorneys and Patent Agents are not allowed to disclose confidential information which they obtained by way of their profession from a client.

HONG KONG

1. Patent Attorney:

There are no provisions to permit qualification as a patent attorney.

2. Patent Agent:

There are no provisions to permit qualification as a patent agent.

3. Professional Confidentiality/Privilege:

There are no provisions related to professional confidentiality/privilege for patent attorneys or patent agents.

INDIA

1. Patent Attorney:

A patent attorney does not have to have a law degree. A patent attorney has to be a citizen of India, has to have obtained a degree in science, engineering or technology from a university and has to have passed the qualifying patent agents' examination.

2. Patent Agent:

Same as patent attorney.

3. Professional Confidentiality/Privilege:

There are no professional codes of conduct applicable to non-lawyer patent attorneys or patent agents relating to client confidential information.

Lawyers and barristers are required by the Indian Evidence Act to maintain the confidentiality of confidential client information and confidential client communications.

IRAN



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1. Patent Attorney:

A qualified attorney may practice as a patent attorney.

2. Patent Agent:

A person having a degree in science or engineering may practice as a patent agent.

3. Professional Confidentiality/Privilege:

There are no laws dealing with the issue of codes of conduct for patent attorneys or patent agents.

JAPAN

1. Patent Attorney:

No legal qualification is required. All patent attorneys must pass the governmental examination conducted by the Japanese patent office and must be registered with the Japan Patent Attorneys Association.

2. Patent Agent:

There is no separate title of patent agent in Japan.

3. Professional Confidentiality/Privilege:

The Japan Patent Attorneys Association has a code of conduct of confidentiality and it also includes penalty provisions. The Japanese Civil Procedure Code was amended in 1998 to apply the statutory privilege for confidential client information and confidential client communications applicable to Japanese attorneys, also to Japanese patent attorneys with retrospective effect.

JERSEY

1. Patent Attorney:

There are no qualifications for a patent attorney.

2. Patent Agent:

There are no qualifications for a patent agent.

3. Professional Confidentiality/Privilege:



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There are no requirements related to professional confidentiality/privilege for patent attorneys or patent agents.

JORDAN

1. Patent Attorney:

A lawyer who is registered in the register of practicing lawyers qualifies as a patent attorney.

2. Patent Agent:

Any Jordanian national who is legally competent can be admitted as a patent agent.

3. Professional Confidentiality/Privilege:

There are no specific written or oral codes which require patent attorneys or patent agents to maintain confidentiality of confidential client information.

KENYA

1. Patent Attorney:

Patent attorneys must be qualified advocates of the High Court of Kenya with a law degree recognized by the Council of Legal Education.

2. Patent Agent:

Same as patent attorney.

3. Professional Confidentiality/Privilege:

The practice rules of the law society of Kenya requires strict confidentiality of client matters.

LEBANON

1. Patent Attorney:

Any one who has a legal address in Lebanon can act as a patent attorney.

2. Patent Agent:

Same as patent attorney.



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3. Professional Confidentiality/Privilege:

There are no specific rules requiring patent attorneys or patent agents to maintain the confidentiality of client confidential information or confidential communications. However, patent attorneys and patent agents observe self-imposed obligations to maintain the confidentiality of client-attorney privileged information.

MALAYSIA

1. Patent Attorney:

A patent attorney must be an advocate and solicitor and must also pass an examination conducted by the Malaysian Patent Office. The patent attorney must also be domiciled in or a permanent resident of Malaysia.

2. Patent Agent:

A patent agent must be domiciled or a permanent resident of Malaysia, must have a degree in engineering or science and must also pass the examination conducted by the Malaysian Patent Office.

3. Professional Confidentiality/Privilege:

Patent attorneys are required to maintain the confidentiality of confidential client information and communications. Patent attorneys are, under common law and equity, required to maintain the confidentiality of client information and there is an express understanding the client communications must be kept confidential and may not be disclosed.

MEXICO

1. Patent Attorney:

There are no provisions to permit qualification as a patent attorney.

2. Patent Agent:

Same as patent attorney.

3. Professional Confidentiality/Privilege:

Qualified attorneys in Mexico have an obligation of professional secrecy in relation to client confidential information and confidential client communications.

NEW ZEALAND



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1. Patent Attorney:

A patent attorney has to be an attorney at law and has to pass a series of IP examinations controlled by an examination board which is jointly moderated by the New Zealand Patent Office and the New Zealand Institute of Attorneys.

2. Patent Agent:

A patent agent does not have to be a qualified attorney, but has to complete the same series of IP examinations which patent attorneys have to complete. [Currently no technical university degree is required, but this is likely to become the law later in 2009.]

3. Professional Confidentiality/Privilege:

Both patent attorneys and patent agents have an obligation to maintain the confidentiality/privileged status of confidential client information and confidential communications between them and their clients. In addition, an Order in Council of August 2008 amended the Evidence Act of 2006 to include professional privilege in communications between a client and patent attorneys as well as patent agents in a list of countries which includes well over 80 countries, and thus the vast majority of countries in the world.

NIGERA

1. Patent Attorney:

Membership of the Nigerian bar makes all attorneys eligible as patent attorneys.

2. Patent Agent:

There are no regulations relating to the qualification as patent agents.

3. Professional Confidentiality/Privilege:

The rules of professional conduct and the Nigerian Evidence Act require lawyers and their employees to preserve the confidences of their clients, and forbid lawyers from disclosing communications made to them by or behalf of their client in the course of their employment as a legal practitioner. The Evidence Act extends this prohibition to interpreters and agents of legal practitioners. Therefore patent agents, in the employment of patent attorneys, would be subject to the same obligation of confidentiality.

PAKISTAN [No information yet received.]

1. Patent Attorney:



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2. Patent Agent:
3. Professional Confidentiality/Privilege:

PERU [No information yet received]

1. Patent Attorney:
2. Patent Agent:
3. Professional Confidentiality/Privilege:

PHILIPPINES

1. Patent Attorney:

This country does not have a patent attorney profession as such. Attorneys may become patent agents by passing the patent agent qualifying examination.

2. Patent Agent:

Patent agents must pass the patent agent qualifying examination.

3. Professional Confidentiality/Privilege:

The code of professional responsibility imposes an obligation of professional confidentiality on attorneys who must maintain the confidentiality of confidential client information and confidential client communications.

There is no formal code of conduct for non-lawyer patent agents. However, it could be argued that the civil code on agency and human relations would impose an obligation of confidentiality on patent agents to maintain the confidentiality of client communications and client confidential information.

SINGAPORE

1. Patent Attorney:

A patent attorney must be an attorney, must be a resident in Singapore, must have a technical university degree or equivalent qualification approved by the Registrar of Patents, must have passed an IP course conducted by the National University of Singapore, must have passed an examination conducted by the Registrar of Patents, and must have completed an internship in patent agency work under the supervision of a registered patent agent for a certain period.



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2. Patent Agent:

A patent agent does not need to be a registered lawyer, but must meet all of the other requirements as set out above for a patent attorney.

3. Professional Confidentiality/Privilege:

There is a code of conduct for attorneys, and this for patent attorneys, that requires them to maintain the confidentiality of client confidential information and of confidential communications with a client.

There is no code of conduct for patent agents and therefore no obligation on patent agents to maintain the confidentiality of client confidential information or confidential communications with a client.

SOUTH AFRICA

1. Patent Attorney:

A patent attorney must be admitted as an attorney in South Africa, must be a member of the South African Law Society, must be in possession of a technical or scientific diploma or degree or have adequate practical experience in a technical or scientific field. In addition, the patent attorney must have passed all of the patent examination board examinations.

2. Patent Agent:

It is no longer possible to qualify as a patent agent.

3. Professional Confidentiality/Privilege:

Patent attorneys are subject to rules of professional confidentiality and must maintain the confidentiality of client confidential information and the confidentiality of confidential communications with a client.

In addition, in the case of the few remaining patent agents who qualified as patent agents before the law was changed, the South African Patent Act provides that such patent agents are subject to the same obligations of confidentiality for confidential client information and for confidential client communications as attorneys are.

SOUTH KOREA

1. Patent Attorney:

Registered Korean attorneys at law qualify as patent attorneys.



**FÉDÉRATION INTERNATIONALE DES CONSEILS EN PROPRIÉTÉ INDUSTRIELLE
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2. Patent Agent:

A patent agent has to pass the professional examination of the “Korean Patent Bar Examination.”

3. Professional Confidentiality/Privilege:

Patent attorneys and patent agents are required, under the Korean Patent Attorney Act, to perform their work with diligence and fairness, and to abide by the Code of Ethics and the rules and regulations. The Code of Ethics imposes an obligation on patent attorneys and patent agents to maintain the confidentiality of client information and client communications.

TAIWAN

1. Patent Attorney:

A patent attorney must pass the patent attorney eligibility examination, which is deemed as equal to the level of the bar examination for lawyers.

2. Patent Agent:

Before 2007, persons who were lawyers, accountants, professional engineers or former patent examiners could apply to be licensed as patent agents. Patent agent licenses are no longer available after the Patent Attorney Act of 2007.

3. Professional Confidentiality/Privilege:

Criminal law imposes an obligation on patent attorneys and on patent agents (who were licensed before 2007) to preserve the commercial or industrial secrets of another which he knows or possesses because of his occupation, and any disclosure thereof shall be punished with imprisonment or a fine.

In addition, the Trade Secret Act provides that no parties, representatives of the parties, advocates, expert witnesses, witnesses, and other parties related to the case, shall use or disclose without due cause any trade secrets of others, known or obtained by virtue of a judicial investigation or proceeding.

THAILAND

1. Patent Attorney:

A patent attorney must be a qualified lawyer, must have a bachelor's degree, must have attended a training program arranged by the Department of Intellectual Property, and must have completed a course on intellectual property laws, arranged by an institution or any other agency which has been approved by the Department of Intellectual Property.



**FÉDÉRATION INTERNATIONALE DES CONSEILS EN PROPRIÉTÉ INDUSTRIELLE
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2. Patent Agent:

A patent agent does not have to have a law degree, but must meet all of the other requirements of a patent attorney.

3. Professional Confidentiality/Privilege:

The criminal code of Thailand prescribes that whoever knows or acquires a private secret of another person by reason of his functions as a competent official or his profession, including an advocate, or lawyer, or by reason of being an assistant in such profession, and who discloses such private secret, shall be punished with imprisonment or with a fine, or with both. This provision would therefore require that both patent attorneys and patent agents have an obligation to maintain the confidentiality of confidential client information and to maintain the confidentiality of confidential client communications.

UNITED STATES

1. Patent Attorney:

A patent attorney must have a law degree, have passed the bar exam in his state of residence, must have a scientific or technical degree in an appropriate field, and must pass the patent bar exam.

2. Patent Agent:

A patent agent does not have to have a law degree, but must have the appropriate scientific degree required for a patent attorney, and must have passed the patent bar exam.

3. Professional Confidentiality/Privilege:

Patent attorneys are subject to a strict standard to maintain the confidentiality and thus privileged status of all client confidential information and client confidential communications.

Patent agents are not subject to any obligations of professional confidentiality or privilege. They would, however, be subject to obligations of confidentiality/privilege if they work under the supervision of or in association with patent attorneys.

VENEZUELA

1. Patent Attorney:

Patent attorneys must be lawyers with a duly approved higher secondary education.

2. Patent Agent:



**FÉDÉRATION INTERNATIONALE DES CONSEILS EN PROPRIÉTÉ INDUSTRIELLE
COMMISSION D'ÉTUDE ET DE TRAVAIL (CET)**

Patent agents are not required to be lawyers, must have a duly approved higher secondary education, and must have passed a capability test before a tribunal made up by three members appointed by the Industrial Property Office Director.

3. Professional Confidentiality/Privilege:

There are no specific provisions that require patent attorneys or patent agents to maintain the confidentiality of confidential client information or confidential client communications.

VIETNAM

1. Patent Attorney:

A patent attorney must have a university degree, must have passed an industrial property representative profession examination, and must have worked in legislation of industrial property for at least five consecutive years, or have been working in the examination of industrial property applications at an international or national industrial property office for at least five consecutive years, or must have a certificate of graduation from a training course on industrial property laws and regulations recognized by the appropriate authority.

2. Patent Agent:

A patent agent must be an enterprise, a law firm or a scientific and technological service organization; must have a function of conducting business of industrial property representation service, and the head of such organization or a person authorized by the head of such organization shall fulfill the conditions for industrial property service as provided above.

3. Professional Confidentiality/Privilege:

Patent attorneys and patent agents are required by law to maintain the confidentiality of all information and all documents relating to a case being handled for a client.



July 29, 2009

Some Critical Issues For Professional Secrecy Obligations

1. Professional secrecy obligations should apply only to the substance of a confidential request by a client to an IP Advisor for IP advice, and to the substance of the confidential advice communicated to the client by the IP Advisor.
2. The professional confidentiality obligation does not extend to objective facts, such as prior art in respect of which advice is requested or is provided. Thus, specific prior art does not become protected against disclosure merely because the client requested advice about such prior art, or because the IP Advisor gave advice about such prior art.
3. Professional confidentiality obligations apply only to confidential communications. Once the communications have been disclosed to others, there is no longer any professional confidentiality obligation which will be recognized. Thus, for example, a communication to a patent office is not confidential and will not be subject to any professional confidentiality obligation.
4. The individuals who are most likely to be harmed in an IP litigation, are those individuals who reside in a country (“home country”) where there is no recognition of any form of professional secrecy obligation related to IP advice. This is because if there is litigation in a country which allows discovery (“litigation country”), then the court in such country is unlikely to recognize any form of professional confidentiality obligation for communications in the litigant’s home country where professional confidentiality obligations are not recognized. As a result, the communications between the litigant and the IP Advisor in the litigant’s home country will have to be disclosed to the opposing party in the litigation country where the litigation is in process. This is a significant disadvantage because the opposing party, who resides in the litigation country where the litigation is taking place, will have the significant advantage of maintaining absolute protection for any confidential communications between itself and its own IP Advisors in the litigation country where the litigation is taking place.