

**STANDING COMMITTEE ON THE LAW OF PATENTS
(Thirteenth Session)**

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The Brazilian Association of Industrial Property Agents - ABAPI wishes to express its support for the proposal for adoption of an international treaty on professional privilege for communications between clients and industrial property agents, patent and trademark attorneys or any other denomination for the profession.

The profession of industrial property agent in Brazil is until today governed by Decree-Law Nr. 8,933, of 20 January 1946. It remained however unregulated during a long period (1971-1998), a new regulation having been adopted in relatively recent times by Ministerial Ordinance Nr. 32 of 19 March 1998, which requires that new postulants to the profession undergo an exam applied by the National Institute of Industrial Property - INPI. Lawyers are also entitled to represent clients before INPI even if they are not qualified Industrial Property Agents.

Privilege for communications between clients and industrial property agents was possibly never a pressing issue in Brazil due to the fact that discovery procedures are virtually non-existent as far as documents in possession of a party accused of patent infringement is concerned, provided such documents are not relevant to the determination of infringement per se. In other words, court decisions generally directed to obtaining proof of infringement are usually specific in ordering seizure of samples of products and/or inspection of an accused party's premises only to the necessary extent that infringement can be determined or discarded.

There is however one element of professional assistance to clients that possibly has been overlooked so far: the effect in other jurisdictions of opinions given by Brazilian industrial property agents under the Brazilian law. While Brazilian professionals provide guidance to foreign clients based on their expertise on the Brazilian legislation and current practice, they will possibly overlook a possible negative impact that such an opinion may have under foreign legislations, if such an opinion is subject to discovery, and if such an opinion is negative with respect to the client's intentions.

Therefore, Brazilian industrial property agents are currently exposed to unintentionally jeopardizing foreign clients, in jurisdictions where communications with clients are not privileged.

It is therefore in the interest of the profession, and in the interest of preserving the desired transparency and frank communication between industrial property agents and their clients anywhere, that ABAPI fully supports the proposal for adoption of an international treaty on professional privilege.