

(Ver15)

**Questionnaire concerning Client privilege  
(APAA Group Name: Indian Group)**

Date: **October 13, 2009**

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India**

**Part 1 (As for qualification for patent professionals):**

1. Questionnaire 1-1

Concerning the qualifications for patent professionals\*1:

Note\*1: A patent professional is admitted for and able to professionally work for at least one of the following practices. In this case, "patents" include utility models.

- practicing patent prosecution before the Patent Office (including any Office administering patent filing, prosecution and/or registration);
- opinion preparation concerning patent actions;
- representation in patent infringement litigations;
- representation in patent nullity procedures or litigations; and
- foreign patent filing and prosecution practices (such as evaluation of patentability of a foreign application, preparing a patent document to be sent to a foreign associate, and sending technical comments to the foreign associate in response to an Office Action)

In your country, what kinds or types of patent professionals (e.g., patent agents, patent attorneys, attorneys at law, etc.) are admitted for conducting professional work relating to practicing patent prosecution before the Patent Office, opinion preparation concerning patent cases, patent infringement litigations, patent nullity procedures or litigations, and foreign patent filing and prosecution

practices? If there are plural kinds or types of patent professionals who are admitted for such professional work, please specify them. In such a case, please indicate the kinds or types of patent professionals and the title names in Table 1 below, by reference to the related law or rule stipulating such patent professionals.

Table 1:

Kinds or types of patent professionals	Title name of patent professional in your country	Related law or rule*2 stipulating the patent professionals
Advocate*3 patent professionals	<b><u>Patent Agent</u>, only if he/she is registered as a patent agent under Section 125</b>	<b>Section 126, Section 127, Section 128 and Rules 110, 111</b>
Non-Advocate patent professionals	<b><u>Patent Agent</u>, only if he/she is registered as a patent agent under Section 125</b>	<b>Section 126, Section 127, Section 128 and Rules 110, 111</b>

Note (\*2): If the professionals are stipulated only in an internal rule of a related organization to which the patent professionals belong, please reproduce the content of such internal rule. In the following, when the law or rule is referred to, please also understand that "law" and "rule" include internal rules if there is any internal rule of a certain organization governing the patent professionals.

Note (\*3): "Advocates" refers to persons licensed to practice law, including attorneys at law, solicitors, barristers, and the like. Please specify the title name in the table. Hereinafter, "Advocate patent professionals" will be simply referred to as "Advocates."

[Note by Co-chair: the Co-chair received the following comments from the India Group concerning the qualification of "Advocate" in India.](#)

[Comments from Mr. Sharad Vadehra:](#)

In India, the lawyers are not defined, only the Advocate is defined. The primary job of the Advocate (who is not a Patent Attorney) is to litigate in the Court of Law. Besides litigation an Advocate can also give opinions on legal matters. The Advocates draft different kinds of documents like deeds, agreements, merger, acquisitions etc. The advocates can also do intensive

legal research. As per the Advocates Act, 1961, only the Advocate is defined and Solicitors and Advocates-on-record are not mentioned. In India all the Lawyers are Advocates. The individual having law degree can practice before the lower court (district court) and high court.

Only the Supreme Court Advocates have been categorized as follows:

(i) SENIOR ADVOCATES

These are Advocates who are designated as Senior Advocates by the Supreme Court of India or by any High Court. The Court can designate any Advocate, with his consent, as Senior Advocate if in its opinion by virtue of his ability, standing at the Bar or special knowledge or experience in law the said Advocate is deserving of such distinction. A Senior Advocate is not entitled to appear without an Advocate-on-Record in the Supreme Court or without a junior in any other court or tribunal in India. He is also not entitled to accept instructions to draw pleadings or affidavits, advice on evidence or do any drafting work of an analogous kind in any court or tribunal in India or undertake conveyancing work of any kind whatsoever but this prohibition shall not extend to settling any such matter as aforesaid in consultation with a junior.

(ii) ADVOCATES-ON-RECORD

Only these Advocates are entitled to file any matter or document before the Supreme Court. They can also file an appearance or act for a party in the Supreme Court.

(iii) OTHER ADVOCATES

These are Advocates whose names are entered on the roll of any State Bar Council maintained under the Advocates Act, 1961 and they can appear and argue any matter on behalf of a party in the Supreme Court but they are not entitled to file any document or matter before the Court.

[Contents of the law/rule]

***Section 126. Qualifications for registration as patent agents. - (1) A person shall be qualified to have his name entered in the register***

*of patent agents if he fulfils the following conditions, namely:-*

*(a) he is a citizen of India;*

*(b) he has completed the age of 21 years;*

*(c) he has obtained a [degree in science, engineering or technology from any university established under law for the time being in force] in the territory of India or possesses such other equivalent qualifications as the Central Government may specify in this behalf, and, in addition, -*

*(ii) has passed the qualifying examination prescribed for the purpose; [or]*

*(iii) has, for a total period of not less than ten years, functioned either as an Examiner or discharged the functions of the Controller under section 73 or both, but ceased to hold any such capacity at the time of making the application for registration:]*

*(d) he has paid such fee as may be prescribed.*

*[2] Notwithstanding anything contained in sub-section (1), a person who has been registered as a patent agent before the commencement of the [Patents (Amendment) Act, 2005] shall be entitled to continue to be, or when required to be re-registered, as a patent agent, on payment of the fee as may be prescribed.*

***Section 127. Rights of patent agents.*** - *Subject to the provisions contained in this Act and in any rules made thereunder, every patent agent whose name is entered in the register shall be entitled-*

*(a) to practice before the Controller; and*

*(b) to prepare all documents, transact all business and discharge such other functions as may be prescribed in connection with any proceeding before the Controller under this Act.*

***Section 128. Subscription and verification of certain documents by patent agents.*** - *(1) all applications and communications to the*

*Controller under this Act may be signed by a patent agent authorised in writing in this behalf by the person concerned.*

*Provided that if such person is absent from India, they may be signed and verified on his behalf by a patent agent authorised by him in writing in that behalf.*

***Rule 110 and 111***

***Rule 110. Particulars of the qualifying examination for patent agents. -***

1) *The qualifying examination referred to in clause © (ii) of sub-section (1) of section 126 shall consist of a written test and a viva voce examination.*

2) *The qualifying examination shall consist of the following papers and marks, namely:-*

*Paper I – Patents Act and Rules* *100*

*Paper II – Drafting and interpretation of patent  
Specifications and other documents* *100*

*Viva voce* *100*

[(3) *The qualifying marks for each written paper and for the viva voce examination shall be fifty per cent. Each, of total marks and a candidate shall be declared to have passed the examination only if he obtains an aggregate of sixty per cent. Of the total marks].*

**Rule 111. Registration of patent agents.-**

1) *After a candidate passes the qualifying examination specified in rule 110 and after obtaining any further information which the Controller considers necessary he shall, on receipt of the fee specified therefore in the First Schedule, enter the candidate's name in the register of patent agents and issue to him a certificate of registration as a patent agent.*

2. Questionnaire 1-2 (scope of patent related practices or work for which patent professionals are admitted):

(1) Questions are raised about the following kinds of professional work.

- practicing patent prosecution before the Patent Office;
- opinion preparation concerning patent cases;
- representation in patent infringement litigations;
- representation in patent nullity procedures or litigations; and
- foreign patent filing and prosecution practices.

If there are plural kinds or types of professionals, then please indicate the kinds of professional work admitted for in relation to the kinds or types of patent professionals shown in Table 2 as follows, by reference to the related law or rule stipulating the patent professionals. Please explain such kind or type of patent professionals and classify them into Advocates and non-Advocate patent professionals.

Table 2:

Scope of professional work admitted for:	Advocates	Non-Advocate	patent
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	(yes or no)	professionals*4 (yes or no)
i) Patent prosecution practice before the Patent Office	<b>Yes, only if he/she is registered as a patent agent under Section 125</b>	<b>Yes, only if he/she is registered as a patent agent under Section 125</b>
ii) Opinion preparation concerning patent cases	<b>Yes</b>	<b>Yes</b>
iii) Representation in patent infringement litigations	<b>Yes</b>	<b>No</b>
iv) Representation in patent nullity procedures or litigations	<b>Yes</b>	<b>No</b>
v) Foreign patent filing and prosecution practices	<b>Yes, only if he/she is registered as a patent agent under Section 125</b>	<b>Yes, only if he/she is registered as a patent agent under Section 125</b>

Note (\*4): If there are plural kinds or types of non-Advocate patent professionals (such as a patent agent, Benrishi, etc), then please indicate the scope of professional work, respectively. The above is also applied to the following questions below.

***In India the Laws relating to the Qualification and/or examination for the Patent Agent has been amended from time to time.***

*Many of the Patent agents got themselves registered without appearing for the qualifying examination before the amendment that took place in 2003, some of the categories have been mentioned herein below:*

***A) Before November 1, 1966***

*A person who has been practicing as a patent agent before 1<sup>st</sup> November 1966 and has filed not less than five complete specifications before that date, in the Indian Patent Office was eligible and would had to pay a nominal official fee for being a Patent Agent. This was without the requirement of a technical background or having a Advocates qualification or even without the examination.*

***B) Before the commencement of the Patents (Amendment) Act, 2005 i.e January 01, 2005:***

*i) A person who had a law degree (under the Advocates Act, 1961) he was also eligible for being registered as Patent Agent, irrespective of his/her technical background. He/she was not required to appear for any qualifying examination.*

*ii) A person who was a graduate in any subject from any university established under law for the time being in force in the territory of India or possesses equivalent qualifications as the Central Government, irrespective of any Legal background, the person was eligible to appear in a qualifying examination as organized by the Indian Patent Office., once he qualified the examination he was eligible for being registered as Patent Agent and prosecute the cases under the Law.*

*C) As per Indian Patents [Amendment] Act, 2005 now prevailing:*

*As per the recent amendments Indian Patent Office conducts an examination for Patent agents twice a year. Indian Patent Law mandates a science or technical degree for person(s) desiring to appear for the qualifying examination. Individuals with a Law degree are eligible for appearing in the examination only if they are having technical background. Other criteria for eligibility include being an Indian Citizen, and 21 years of age. There are at present approximately more than 1400 registered patent agents in India. A list of registered Patent Agent is available on the following link: [http://ipindia.nic.in/ipr/patent/ListPatentAgents\\_August2008.pdf](http://ipindia.nic.in/ipr/patent/ListPatentAgents_August2008.pdf)*

*\* The list may not be updated.*

*For the purpose of maintaining a high standard of efficiency and professional integrity the Patent Act has prescribed certain qualifications for persons practicing as Patent Agents and provided for their registration. Only persons who satisfy those qualification and are registered under the Patents Act are allowed to practice as Patent Attorneys in India.*

(2) In the scope of the professional work as listed in Questionnaire 2(1) above, what professional work can be conducted only by the patent professionals (i.e. if a non-qualified person works for compensation, he or she would be punished)?



Table 3:

Scope of professional work admitted for:	Advocates (yes or no)	Non-Advocate professionals*4 (yes or no)
i) Patent prosecution practice before the Patent Office	<b>Yes, only if he/she is registered as a patent agent under Section 125</b>	<b>Yes, only if he/she is registered as a patent agent under Section 125</b>
ii) Opinion preparation concerning patent cases	<b>yes</b>	<b>yes</b>
iii) Representation in patent infringement litigations	<b>yes</b>	<b>no</b>
iv) Representation in patent nullity procedures or litigations	<b>yes</b>	<b>no</b>
v) Foreign patent filing and prosecution practices	<b>Yes, only if he/she is registered as a patent agent under Section 125</b>	<b>yes, only if he/she is registered as a patent agent under Section 125</b>

**Section 129. Restrictions on practice as patent agents.** - (1) No person either alone or in partnership with any other person, shall practise, described or hold himself out as a patent agent, or permit himself to be so described or held out, unless he is registered as patent agent or, as the case may be, unless he and all his partners are so registered.

(2) No company or other body corporate shall practise, described itself or hold itself out as patent agents or permit itself to be so described or held out.

*Explanation.* - For the purposes of this section, practice as a patent agent includes any of the following acts, namely:-

- (a) applying for or obtaining patents in India or elsewhere;
- (b) preparing specification or other documents for the purposes of this Act or of the patent law of any other country;
- (c) giving advice other than a scientific or technical nature as to the validity of patents or their infringement.

***Section 123 Practice by non-registered patent agents***– if any person contravenes the provisions of Section 129, he shall be punishable with fine which may extend to one lakh rupees in the case of first offence and five lakh rupees in the case of a second or subsequent offence.

3. Questionnaire 1-3 (the conditions under which a person may act as a patent professional):

(1) What are the conditions under which a person may act as a patent professional for the above scope of work? Please answer the following sub-questions.

(i) Whether or not a qualification test is required? If so, please indicate the law or rule stipulating the qualification test. If there are plural kinds or types of patent professionals required to take the qualification test, then please answer the questions, respectively. In such a case, please explain which kind or type of patent professionals is required to take a qualification test in Table 4 below, by specifying the kind or type of the patent professionals in Table 4 as follows, and by reference to the related law or rule stipulating the qualification test.

**Ans (i) Yes, a qualification test is required under Section 125 and the particulars for the qualifying examination under Rule 110 are as follows:**

***Rule 110. Particulars of the qualifying examination for patent agents.-***

1) *The qualifying examination referred to in clause © (ii) of sub-section (1) of section 126 shall consist of a written test and a viva voce examination.*

2) *The qualifying examination shall consist of the following papers and marks, namely:-*

*Paper I – Patents Act and Rules* *100*

*Paper II – Drafting and interpretation of patent  
Specifications and other documents* *100*

*Viva voce* *100*

[(3) *The qualifying marks for each written paper and for the viva voce examination shall be fifty per cent. Each, of total marks and a candidate shall be declared to have passed the examination only if he obtains an aggregate of sixty per cent. Of the total marks].*

Table 4:

Kind or type of patent professionals	Title name of patent professional in your county	Is qualification test required? (yes or no)	Related law or rule stipulating the qualification test, if any
Advocates	<b>Patent Agent, only if he/she is registered as a patent agent under Section 125</b>	<b>yes</b>	<b>Section 125, Rule 110</b>
Non-Advocate patent professionals	<b>Patent Agent, only if he/she is registered as a patent agent under Section 125</b>	<b>yes</b>	<b>Section 125, Rule 110</b>

(ii) If a qualification test is required, please briefly answer a) to c) and fill in Table 5 below. Also, please indicate

the related law and rule stipulating the following items:

a) How many subjects are covered?

**Ans: Patents Act and Rules**

Drafting and interpretation of the patent specification and other documents

b) What kinds of subjects are covered?

**Ans: Indian Patent Act and Rules and Drafting and interpretation of patent specifications and other documents.**

c) Is an interview needed?

**Ans: Yes**

***Rule 110: Particulars of the qualifying examination for patent agents. -***

1) *The qualifying examination referred to in clause © (ii) of sub-section (1) of section 126 shall consist of a written test and a viva voce examination.*

2) *The qualifying examination shall consist of the following papers and marks, namely:-*

*Paper I – Patents Act and Rules* *100*

*Paper II – Drafting and interpretation of patent  
Specifications and other documents* *100*

*Viva voce* *100*

[(3) *The qualifying marks for each written paper and for the viva voce examination shall be fifty per cent. Each, of total marks*

*and a candidate shall be declared to have passed the examination only if he obtains an aggregate of sixty per cent. Of the total marks/.*

Table 5:

Kind or type of patent professionals	How many subjects are covered?	What kinds of subjects are covered?	Is an interview needed?	Related law or rule, if any
Advocates	<b>Advocates should have scientific background as an eligibility criteria</b>	<b>Patents Act and Rules Drafting and interpretation of the patent specification and other documents</b>	<b>yes</b>	<b>Section 125, Rule 110</b>
Non-Advocate patent professionals	<b>Patent act and Rules</b>	<b>Patent act and Rules Drafting and interpretation of the patent specification and other documents</b>	<b>yes</b>	<b>Section 125, Rule 110</b>

(iii) Does the test cover a code of conduct or vocational ethics?

**Ans: No**

If the answer is yes, please refer to the law or rule stipulating a code of conduct or vocational ethics.

Table 6:

Kind or type of patent professionals	Is a code of conduct or vocational ethics included as a subject? (yes or no)	Related law or rule, if any
Advocates	<b>No</b>	----
Non-Advocate patent professionals	<b>No</b>	----

(iv) Is practical training required before taking the test?

**Ans: No**

If the answer is yes, how long a term of training is required?

In this case, please refer to the law or article stipulating this point.

*Legally there is no practical training required, however there are several private bodies who have started imparting training for the Patent Agent examination. It has been observed that even though there is no such mandatory requirement, quite a few candidates join Patent Law firms and undergo on the job training before appearing for the Patent Agent examination. This has become more important now for the reason not only because of the Patent Agent examination difficult to qualify but also because of the paper on patent drafting, which requires more than average skills which can be obtained only while working in a patent law firm.*

Table 7:

Kind or type of patent professionals	Is practical training required? (yes or no)	How long?	Law and/or rule basis
Advocates	<b>No</b>	----	----
Non-Advocate patent professionals	<b>No</b>	----	----

(2) Concerning how to govern, control, administrate or maintain the qualification of patent professionals:

Is there any organization governing, controlling, administrating or maintaining the qualification of the patent professionals?

(Answer here: Yes or No)

**Yes**

If the answer is yes, please answer the following sub-questions.

a) Which organization governs, controls, administrates or maintains the qualification of the patent professionals?

**Ans: Indian Patent Office only, under Section 125 and Rule 108**

**Section 125. Register of patent agents.** - (1) *The Controller shall maintain a register to be called the register of patent agents in which shall be entered the names, addresses and other relevant particulars, as may be prescribed, of all persons qualified to have their names so entered under section 126.*

(2) *Notwithstanding anything contained in sub-section (1), it shall be lawful for the Controller to keep the register of patent agents in computer floppies, diskettes or any other electronic form subject to such safeguards as may be prescribed.*

**Rule 108. Particulars to be contained in the register of patent agents.**-(1) *The register of patent agents maintained under section*

125 shall contain the name, nationality, address of the principal place of business, addresses of branch offices, if any, the qualifications and the date of registration of every registered patent agent.

(2) Where the register of patent agents is in computer floppies, diskettes or any other electronic form, it shall be maintained and accessed only by the person who is duly authorized by the Controller and no entry or alteration of any entry or rectification of any entry in the said register shall be made by any person who is not so authorized by the Controller.

(3) (i) Copies of the register of patent agents shall be maintained in each of the branch offices;

(ii) The register of patent agents shall also contain specimen signatures and photographs of the persons registered as patent agents.

b) Whether or not the organization has been established so that the members of the organization can professionally represent their clients?

**Ans: It is government body, Department of Industrial Policy and Promotions, Ministry of Commerce and Industry**

Table 8:

Kind or type of patent professionals	Sub-question a) above	Sub-question b) above	Law and/or rule basis
Advocates	<b>Must have degree in science and registered as patent agents under the said Act. India Patent Office</b>	yes	<b>Section 125 and Rule 108</b>
Non-Advocate patent professionals	<b>Indian Patent Office</b>	yes	<b>Section 125 and Rule 108</b>

(3) As for the conditions

for maintaining the qualification:



Please answer the following sub-questions:

(i) Are patent professionals required to complete an obligatory subject or lecture (such as code of conduct or vocational ethics, and lectures on practice change or law amendment) in order for him/her to maintain the qualification for the professional work?

(Answer here: Yes or No)

**Ans: No**

(ii) If yes in Item (i), please answer whether or not a code of conduct or vocational ethics is included as the obligatory subject?

Table 9:

Kind or type of patent professionals	Code of conduct or vocational ethics (yes or no)	Law and/or rule basis
Advocates	----	----
Non-Advocate patent professionals	----	----

4. Questionnaire1-4 (concerning the penalty when patent professionals do not meet the conditions for being admitted for the professional work):

(1) Is there any criminal penalty imposed when a patent professional releases or divulges confidential information obtained

from his or her client, without any justifiable reason?

(Answer here: Yes or No)

**Ans: No, as such there is no penalty when a patent professional releases or divulges confidential information obtained from his or her client, without any justifiable reason, however when a company takes up a project with a client they normally will have to sign an agreement with the client that neither party will disclose information that will be shared as part of the project to anybody else and that the information shared shall not be used for creating competing products/services by the company. This is a standard document that needs to be signed for most projects. This document is also referred to as Non Disclosure Agreement.**

**As such there is no Section that prevents patent professional from releasing confidential information of his client.**

If the answer is yes in item (1), please give the following information in Table 10 below.

(i) Which law or rule governs such penalty?

(ii) Amount of fine, if any

(iii) Term for imprisonment, if any

Table 10

Kind or Type of patent professionals	Information i) above	Criminal Penalty	
		Amount of fine (ii)	Term for imprisonment (iii)
Advocates	-----	-----	-----
Non-Advocate patent professionals	-----	-----	-----

(

2) Is there any penalty imposed when a patent professional has become unsuitable for being admitted for the professional work (for example, he or she has failed to meet the conditions for the qualification (for example, he or she violates the Association laws or rules, damages the order or reputation of the association or misbehaves in a manner impairing his/her or its own dignity) after he or she has become qualified)?

(Answer here: Yes or No)

**Ans: Yes**

If the answer is yes in item (2), please give the following information in Table 11 below.

(a) Which law or rule governs such penalty?

**And (a) Section 131 and Rule 119**

***Section 131. Power of Controller to refuse to deal with certain agents.***- (1) *Subject to any rules made in this behalf, the Controller may refuse to recognize as agent in respect of any business under this Act-*

*(a) any individual whose name has been removed from, and not restored to, the register;*

*(b) any person who has been convicted of an offence under section 123;*

*(c) any person, not being registered as a patent agent, who in the opinion of the Controller is engaged wholly or mainly in acting as agent in applying for patents in India or elsewhere in the name or for the benefit of the person by whom he is employed;*

*(d) any company or firm, if any person whom the Controller could refuse to recognise as agent in respect of any business under this Act, in acting as a director or manager of the company or is a partner in the firm.*

*(2) The Controller shall refuse to recognise as agent in respect of any business under this Act any person who neither resides nor has a place of business in India.*

***Rule 119. Refusal to recognize as patent agent.***- *If the Controller is of the opinion that any person should not be recognized as a patent agent in respect of any business under the Act as provided in sub-section (1) of section 131 thereof, he shall communicate his*

*reasons to that person and direct him to show cause why he should not refuse to recognise him as such agent, within such time as he may allow, and after considering the replay, if any, of that person and giving him an opportunity of being heard, the Controller may pass such orders as he may deem fit.*

(b) Disciplinary action, if any

**Ans (b) The Controller shall refuse to deal with such agents under Section 131**

(c) Suspension of professional work, if any

**Ans (c) No**

(d) Deprivation of the qualification, if any

**Ans (d) No**

(e) Other penalty, if any

**Ans (e) No**

Table 11

Kind or Type of patent professionals	Information (a) above	Penalty			
		Disciplinary action (b)	Suspension of professional work (c)	Deprivation of the qualification (d)	Other penalty (e)
Advocates	<b>Section 131 and Rule 119</b>	<b>The Controller shall refuse to deal with such agents under Section 131</b>	No	No	No
Non-Advocate patent professionals	<b>Section 131 and Rule 119</b>	<b>The Controller shall refuse to deal with such agents under Section 131</b>	No	No	No

**Part 2 (As for Client privilege or professional secrecy):**

Before raising the following questions, it would be useful to comment on some points concerning the terminology used in the following questions, in order to avoid any possible confusion derived from any possible misunderstanding of the terminology.

General concept:

1. Client privilege is the right of a client not to have to disclose information (communications and/or documents\*) which would otherwise have been required. In common law countries, client privilege may allow a client or a patent professional to keep communications and/or documents secret and to be silent on certain issues under a discovery system.
2. In the following questions, the term "a discovery system" means a system comparable to the discovery system employed in the U.S. litigation procedure. The discovery procedure is the procedure for collecting evidence before a trial in the U.S. The discovery procedure is stipulated in the Federal Rules of Civil Procedure: Rule 26 (FRCP R26).

Note\*: Communication takes place usually in the form of letters. Here, "documents" do not include communication documents. The scope of documents stipulated in the Federal Rules of Civil Procedure: Rule 34 (FRCP R34) may include writings (such as work products and expert opinions), drawings, graphs, charts, photographs and the like.

3. In civil law countries, professional secrecy may allow a patent professional or a client not to disclose confidential communications or not to produce confidential documents, such confidential communications and/or documents having taken between the patent professional and his or her client or prepared thereby.

1. Questionnaire 2-1

- (1) If your country is a common law country, please fill in Table 12 below, taking the following questions into consideration.
  - (i) Is there any discovery system corresponding to that employed in the U.S. ?

(Answer here: Yes or No)

**Ans: No**

(ii) If yes, please answer the following a) to c).

(a) In the discovery procedure, can patent professionals be immune from testimony or document production (such as "work product"\*5) before the courts?

Note\*5 "Work product" is the term used in the U.S. discovery procedure and means the document or tangible thing which has been prepared by a Advocate in anticipation of litigation or for trial by or for another party or its representative (FRCP R. 26(b)(3)(A))

(b) If the answer is yes, what kinds of communications and/or documents are covered?

(c) Is there any difference between immunity as to technical advice and immunity as to legal advice? If yes, please explain the difference.

Table 12

Common law countries		
Discovery system	Yes	No
What is protected from disclosure: Communication/documents?	--	--
What kinds of communications are protected?	--	--
What kinds of documents are protected?	--	--
Is legal advice protectable?	--	--
Is technical advice protectable?	--	--
Difference if any between legal advice and technical advice		

(2) If your country is a civil law country, please fill in Table 13 below, taking the following questions into consideration.

No, our country is not the civil law country.

(i) Is professional secrecy protectable?

(Answer here: Yes or No)

**Ans: No**

(ii) If yes, please answer the following questions a) to c).

(a) Does a patent professional have to testify or produce documents before the courts?

(b) If the answer is yes, what kinds of communications and/or documents are covered?

(c) Is there any difference between technical advice and legal advice as to professional secrecy? If yes, please explain the difference.



Table 13

Civil law countries		
Is professional secrecy protectable?	----	
What is protected from disclosure: Communications/documents?	----	
What kinds of communications are protected?	----	
What kinds of documents are protected?	----	
Is legal advice protectable?	----	
Is technical advice protectable?	----	
Difference if any between legal advice and technical advice	----	

(3) As for treatment of foreign patent professionals in common law countries:

(i) In your country, is there any law or rule to provide the same privilege as provided to domestic patent professionals to foreign patent professionals?

(Answer here: Yes or No)

**Ans: No**

**Please note that there are no provisions of professional confidentiality or privilege in India in the Indian Trademarks or Patents Act. The Act which deals with such provisions is the Indian Evidence Act, 1872. The relevant section is quoted herein below:-**

**No barrister, Attorney, pleader or vakil shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on**

behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:

Provided that nothing in this section shall protect from disclosure

(1) Any such communication made in furtherance of any 87[illegal] purpose.

(2) Any fact observed by any barrister, pleader, attorney or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, 88[pleader], attorney or vakil was or was not directed to such fact by or on behalf on his client.

Explanation - The obligation stated in this section continues after the employment has ceased.

(ii) If the answer is yes, then please explain the content of the law or rule.

Table 14: Common law countries (answer in yes or no):

	Non-Advocate patent professional	Advocates	Client	Foreign non-Advocate patent professional	Foreign Advocate
Client privilege					
Communication					
Document					
Legal advice					
Technical advice					

[Contents of the law/rule]

(4) As for treatment of foreign patent professionals in civil law countries:

(i) In your country, is there any law or rule to provide the same professional secrecy as provided to domestic patent professionals to foreign patent professionals?

(Answer here: Yes or No)

(ii) If the answer is yes, then please explain or exemplify the content of the law or rule.

Table 15: Civil law countries (answer in yes or no):

	Non-Advocate patent professional	Advocate	Client	Foreign non-Advocate patent professional	Foreign Advocate
Professional secrecy					
Communication					
Work product					
Legal advice					
Technical advice					

[Contents of the law/rule]

2. Questionnaire 2-2

Please give the following information on your country concerning the cases where Client Privilege or professional secrecy was an issue (including past cases). Specifically, please briefly explain the following points as shown in Tables 16 and 17.

- (1) Cases where Client Privilege or professional secrecy was accepted or recognized in your country.
- (2) Cases where Client Privilege or professional secrecy was denied in your country.

Table 16: Common law countries:

Client Privilege	Non-Advocate patent professional	Advocate	Client	Foreign non-Advocate patent professional	Foreign Advocate
Accepted	No Act	No Act	No Act	No Act	No Act
Denied	No Act	No Act	No Act	No Act	No Act

Table 17: Civil law countries:

Professional secrecy	Non-Advocate patent professional	Advocate	Client	Foreign non-Advocate patent professional	Foreign Advocate
Accepted	----	----	----	----	
Denied	----	----	----	----	

End