

(Ver15)

**Questionnaire concerning Client Privilege  
(APAA Group Name: Indonesia)**

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**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
Lawyer*3 patent professionals (i)	Advocate/Lawyer (Advokat), handling only for patent litigation.	Article 1 point (1) of Law No. 18 of 2003 regarding Advocate.
Non-lawyer patent professionals (ii)	IP Consultant (Konsultan HKI), in charge only for patent prosecution.	Article 1 point (7) of Law No. 14 of 2001 regarding Patent, and Article 1 point (1) of Government Regulation No. 2 of 2005 regarding Consultants of IPR.
Lawyer & IP Consultant (iii)	Advocate/Lawyer/Patent Attorney – IP Consultant (Advokat/Advokat Paten), handling for the patent prosecution and litigation.	Article 1 point (1) of Law No. 18 of 2003 regarding Advocate <i>jo</i> Article 1 point (7) of Law No. 14 of 2001 regarding Patent, and Article 1 point (1) of Government Regulation No. 2 of 2005 regarding Consultants of IPR.

Law No. 14 of 2001 regarding Patent

Article 1 point (7)

*Proxy shall mean a consultant of intellectual property rights.*

Article 1 point (1) of Government Regulation No. 2 of 2005 regarding Consultants of IPR:

*“Consultant of intellectual property rights shall mean a person having skilled in the IPR area which specifically providing services in the field of submitting and managing applications of IPR which carried out by the Directorate General and registered as a consultant of intellectual property rights at the Directorate General.*

Article 1 point (1) of Law No. 18 of 2003 regarding Advocate

*Advocate shall mean person having profession to provide legal service, inside or outside the Court who is having fulfilled the requirement as stipulated by this Law.*

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): "Lawyers" 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, "Lawyer patent professionals" will be simply referred to as "Lawyers."

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 lawyers and non-lawyer patent professionals.

Table 2:

Scope of professional work admitted for:	Lawyers (yes or no)	Non-lawyer patent professionals*4 (yes or no)
i) Patent prosecution practice before the Patent Office	Yes, refers to Table 1 (iii) No, refers to Table 1 (i)	Yes (Article 1 point (7) of Law No. 14 of 2001 regarding Patent, and Article 8 point (1) of Government Regulation No. 2 of 2005 regarding IP Consultants) *
ii) Opinion preparation concerning patent cases	Yes, refers to Table 1 (iii) No, refers to Table 1 (i)	Yes (Article 1 point (7) of Law No. 14 of 2001 regarding Patent, Article 8 point (4)(c) of Government Regulation No. 2 of 2005 regarding Consultants of IPR
iii) Representation in patent infringement litigations	Yes	No
iv) Representation in patent nullity procedures or litigations	Yes	No
v) Foreign patent filing and prosecution practices	Yes (for prosecution practices)	Yes (for foreign patent filing) (Article 26 point (1) of Law No. 14 of 2001 regarding Patent)

Note (\*4): If there are plural kinds or types of non-lawyer 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.

Law No. 14 of 2001 regarding Patent

Article 1 point (7)

*Proxy shall mean a consultant of intellectual property rights.*

Article 26 point (1) of Law No. 14 of 2001 regarding Patent

*An Application which is filed by an Inventor or an Applicant who does not reside or does not have a fixed domicile in the territory of the Republic of Indonesia must be filed through his Proxy in Indonesia.*

Article 8 point (1) of Government Regulation No. 2 of 2005 regarding Consultants of IPR:

*Consultant of intellectual property rights have the right to represent, accompany, and/or assist the service interest user for filing and managing IPR applications to the Directorate General.*

Article 8 point (4)(c) of Government Regulation No. 2 of 2005 regarding IP Consultants

*Consultant of intellectual property rights oblige to*

*c. provide consultation services and socialization in the field of IPR, including procedure for filing the IPR.*

(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)? Yes, they will

Table 3:

Scope of professional work admitted for:	Lawyers (yes or no)	Non-lawyer patent professionals*4 (yes or no)
i) Patent prosecution practice before the Patent Office	No	Yes (Article 1 point (7) of Law No. 14 of 2001 regarding Patent, and Article 8 point (1) of Government Regulation No. 2 of 2005 regarding IP Consultants) *
ii) Opinion preparation concerning patent cases	No	Yes (Article 1 point (7) of Law No. 14 of 2001 regarding Patent, and Article 8 point (4)(c) of Government Regulation No. 2 of 2005 regarding Consultants of IPR
iii) Representation in patent infringement litigations	Yes	No
iv) Representation in patent nullity procedures or	Yes	No

litigations		
v) Foreign patent filing and prosecution practices	Yes (for prosecution practices)	Yes (for foreign patent filing)

Article 1 point (7) of Law No. 14 of 2001 regarding Patent:

*Proxy shall mean a consultant of intellectual property rights.*

Article 26 point (1) of Law No. 14 of 2001 regarding Patent:

*An Application which is filed by an Inventor or an Applicant who does not reside or does not have a fixed domicile in the territory of the Republic of Indonesia must be filed through his Proxy in Indonesia.*

Article 8 point (1) of Government Regulation No. 2 of 2005 regarding Consultants of IPR:

*Consultant of intellectual property rights have the right to represent, accompany, and/or assist the service interest user for filing and managing IPR applications to the Directorate General.*

Article 8 point (4)(c) of Government Regulation No. 2 of 2005 regarding IP Consultants

*Consultant of intellectual property rights oblige to*

*c. provide consultation services and socialization in the field of IPR, including procedure for filing the IPR.*

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.

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
Lawyers	Advocate/Lawyer (Advokat)	Yes (Bar Examination)	Article 3 par (1) point (f) of Law No. 13 of 2003 regarding Advocate
Non-lawyer patent professionals	IP Consultant (Konsultan HKI)	Yes (IP Consultant Examination)	Article 3 point (f) of Government Regulation No. 2 of 2005 regarding Consultants of IPR

Article 3 par (1) point (f) of Law No. 13 of 2003 regarding Advocate:

*To be inaugurated as an Advocate, must fulfill the following requirement:*

*f. Passing the bar examination held by the Advocate Organization.*

Article 3 point (f) of Government Regulation No. 2 of 2005 regarding Consultants of IPR.:

*To be elected as a Consultant of IPR, an applicant must fulfill the following requirements:*

- a. National of the Republic of Indonesia;*
- b. Having permanent residence in Indonesia;*
- c. Graduated from University;*
- d. Having knowledge of the English language;*
- e. Not a civil servant;*

*f. Having passed the training of Consultant of Intellectual Property Rights.*

(ii) If a qualification test is required, please briefly answer the following 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?
- b) What kinds of subjects are covered?
- c) Is an interview needed?

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
Lawyers	7	Procedure Law for Administrative Court (Hukum Acara Peradilan TUN), Law of Civil Procedure (HAPER), Law of Criminal Procedure (HAPID), Civil Procedural on Religions Law (Hukum Acara Perdata Agama), Procedure Law in Industrial Relations (Hukum Acara Peradilan Hubungan Industrial), Advocate Ethic of Conducts (Kode Etik Advokat), Role, Functions, and Lawyer Organization Development (Peran, Fungsi dan Perkembangan Organisasi Advokat), Intellectual Property Rights (HKI).	No	Article 3 par (1) point (f) of Law No. 13 of 2003 regarding Advocate
Non-lawyer patent professionals	6	Patents, Trademarks, Copyrights, Industrial Designs, Trade Secret, Layout Design of Integrated Circuit	No	Article 3 point (f) and Article 4 of Government Regulation No. 2 of 2005 regarding Consultants of IPR



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

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

Article 3 par (1) point (f) of Law No. 13 of 2003 regarding Advocate:

*To be inaugurated as an Advocate, must fulfill the following requirement:*

*f. Passing the bar examination held by the Advocate Organization.*

Article 3 point (f) of Government Regulation No. 2 of 2005 regarding Consultants of IPR:

*To be elected as a Consultant of IPR, an applicant must fulfill the following requirements:*

*a. National of the Republic of Indonesia;*

*b. Having permanent residence in Indonesia;*

*c. Graduated from University;*

*d. Having knowledge of the English language;*

*e. Not a civil servant;*

*f. Having passed the training of Consultant of Intellectual Property Rights.*

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
Lawyers	Yes	Advocate Ethic of Conducts
Non-lawyer patent	No	No

professionals		

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

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.

Table 7:

Kind or type of patent professionals	Is practical training required? (yes or no)	How long?	Law and/or rule basis
Lawyers	Yes	1 – 3 months (Training before Bar Examination) 2 consecutive years in the Law Office	- Article 3 par (1) point (g) of Law No. 13 of 2003 regarding Advocate
Non-lawyer patent professionals	Yes	2 months	Article 3 point (f) and Article 4 of Government Regulation No. 2 of 2005 regarding Consultants of IPR

Article 3 par (1) point (g) of Law No. 13 of 2003 regarding Advocate:

Article 3 par (1) point (f) of Law No. 13 of 2003 regarding Advocate:

*To be inaugurated as an Advocate, must fulfill the following requirement:*

*g. being apprentice for at least 2 (two) consecutive years in an Advocate's Office.*

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

Table 8:

Kind or type of patent professionals	Sub-question a) above	Sub-question b) above	Law and/or rule basis
Lawyers	<b>Advocate Organization</b>	<b>No</b>	<b>Article 28 of Law No. 13 of 2003 regarding Advocate</b>
Non-lawyer patent professionals	<b>Directorate General or University appointed by the Directorate General</b>	<b>No</b>	<b>Article 9 and Article 10 par (1) of Government Regulation No. 2 of 2005 regarding Consultants of IPR</b>

Article 28 of Law No. 13 of 2003 regarding Advocate:

*Advocate Organization is the only umbrella organization which is free and independent and established according to this Law which is aimed and purposed to enhance the quality of Advocate profession.*

Article 9 of Government Regulation No. 2 of 2005 regarding Consultants of IPR:

*In order to enhance the quality of Consultants of IPR, the Directorate General or the Universities appointed by the Directorate General shall organize advanced trainings in the field of IPR.*

Article 10 par (1) of Government Regulation No. 2 of 2005 regarding Consultants of IPR:

*The Directorate General shall periodically in every 5 (five) years evaluate the performance of Consultants of IPR.*

(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)

(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	Code of conduct or vocational	Law and/or rule basis
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professionals	ethics (yes or no)	
Lawyers	Yes	No
Non-lawyer patent professionals	Yes	No

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)

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)
Lawyers	No	No	No
Non-lawyer patent professionals	No	No	No

(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)

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?
- (b) Disciplinary action, if any
- (c) Suspension of professional work, if any
- (d) Deprivation of the qualification, if any
- (e) Other penalty, if any

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)
Lawyers	Article 16 of Advocate Ethic of Conduct	Reminder, Strong Reminder Article 16 par (1) point (a) and (b) of Advocate Ethics of Conduct	Temporary suspension Article 16 par (1) point (c) of Advocate Ethic of Conducts	Deprivation from the member of organization profession Article 16 par (1) point (d) of Advocate Ethic of	Prohibition for temporarily perform the advocate profession inside or outside the Court. Article 16 par (3)

				Conducts	of Advocate Ethic of Conducts
Non-lawyer patent professionals	Article 12 of Government Regulation No. 2 of 2005 regarding Consultants of IPR.	No	No	No	A Consultant of Intellectual Property Rights may be dismissed without honor based on grounds as stated in Art. 12 of Government Regulation No. 2 of 2005 regarding Consultants of IPR.

Article 12 of Government Regulation No. 2 of 2005 regarding Consultants of IPR.:

*A Consultant of Intellectual Property Rights may be dismissed without honor on the following grounds:*

- a. Disobeying the sworn testimony as Consultant of Intellectual Property Rights;*
- b. Having criminal sentence based on a decision of the Court which has been legally binding for having conducted criminal action with a criminal sanction of imprisonment for 4 (four) years or more;*
- c. Failing to fulfill the obligations as referred to in Article 8 paragraph (8);*
- d. Having evidently given a false statement regarding the requirements as referred to in Article 3 items a, b, c, d, and e; or*
- e. Passing the training as referred to in Article 3 item f in dishonest ways.*

**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 11 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) **No, Indonesia is a Civil Law country.**



(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"<sup>5</sup>) before the courts?

Note<sup>5</sup> "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 lawyer 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

Discovery system	Common law countries	
	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.

(i) Is professional secrecy protectable?

(Answer here: Yes or No) **Yes**

(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?	Yes	
What is protected from disclosure: Communications/documents?	<p><b>For Lawyers:</b> Advocate must conceal all things which is known or obtained from his client due to his professional relationship, unless stated contrary by the Law (Article 19 par (1) of Law no 18 of 2003 regarding Advocates)</p> <p><b>For Non-lawyer patent professionals:</b> One of the sworn testimony shall say as follows: "I truly swear: that I will keep the confidentiality of applications which are authorized to me by highly honoring the ethics of Consultants of Intellectual Property Rights." (Article 6 par (2) of Government Regulation No 2 of 2005 regarding Consultants of IPR).</p>	
What kinds of communications are protected?	all things which is known or obtained from his client due to his professional relationship (Article 19 par (1) of Law no 18 of 2003 regarding Advocates) and protection to the electronic communication (Article 19 par (2) of Law no 18 of 2003 regarding Advocates)	
What kinds of documents are protected?	<p>All bundles or documents toward the citement or investigation (Article 19 par (2) of Law no 18 of 2003 regarding Advocates)</p> <p>Application documents (Article 6 par (2) of Government Regulation No 2 of 2005 regarding Consultants of IPR).</p>	
Is legal advice protectable?	Yes, either oral or written (refers to Article 19 par (1)	

	of Law no 18 of 2003 regarding Advocates )	
Is technical advice protectable?	No, only application documents (refers to Article 6 par (2) of Government Regulation No 2 of 2005 regarding Consultants of IPR)	
Difference if any between legal advice and technical advice	Legal Advice, advice from Lawyers to their clients related to the case, either in oral or written form. Technical Advice, advice from Non-lawyer patent professionals to their clients related to the technical solution of their Inventions, i.e.: drafting service, or responding to the official actions, etc.	

(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)

(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-lawyer patent professional	Lawyer	Client	Foreign non-lawyer patent professional	Foreign Lawyer
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) **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): **N/A, not specifically stated in the Law, no Criminal Sentence too.**

	Non-lawyer patent professional	Lawyer	Client	Foreign non-lawyer patent professional	Foreign Lawyer
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-lawyer patent professional	Lawyer	Client	Foreign non-lawyer patent professional	Foreign Lawyer
Accepted					
Denied					

Table 17: Civil law countries: *N/A*

Professional secrecy	Non-lawyer patent professional	Lawyer	Client	Foreign non-lawyer patent professional	Foreign Lawyer
Accepted					
Denied					

End