

**Questionnaire concerning Client Privilege
(Group Name: Korea)**

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Prepared by Casey An

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	Attorney-at-law (Byun-ho-sah)	Article 4 of Attorneys-at-Law Act
Non-lawyer patent professionals	Patent attorney (Byun-ri-sah)	Article 3, Item 1 of Patent Attorneys Act

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 simply refer to those "Lawyers" who may provide at least one of the professional services which are stated in Note 1 above without the necessity of acquiring any other qualification.

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	No.	Yes.
ii) Opinion preparation concerning patent cases	Yes.	Yes.
iii) Representation in patent infringement litigations	Yes.	No.
iv) Representation in patent nullity procedures or litigations	No, if the case is before the Intellectual Property Tribunal which is a quasi-judiciary administrative institution. Yes, if the case is before the Patent Court or the Supreme Court.	Yes.
v) Foreign patent filing and prosecution practices	Unclear.	Yes.

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.

(2) Would a professional be punished if he conducts a professional work listed in Questionnaire 2(1) above without acquiring any other qualification?

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	Yes..	No..
ii) Opinion preparation concerning patent cases	No..	No..
iii) Representation in patent infringement litigations	No.	Unclear.
iv) Representation in patent nullity procedures or litigations	Yes, if the case is before the Intellectual Property Tribunal which is a quasi-judiciary administrative institution.	No.
v) Foreign patent filing and prosecution practices	Unclear.	No.

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	Attorney-at-law (Byun-ho-sah)	Yes.	Judicial Examination Act
Non-lawyer patent professionals	Patent attorney (Byun-ree-sah)	Yes.	Article 4 ^{bis} of Patent Attorneys Act

(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	9	Constitution, Civil Code, Criminal Code, Code of Civil Procedure, Code of Criminal Procedure, Commercial Law, Administrative Law, English, and one of [Criminal Policy, Philosophy of Law, International Law, Labor Law, International Trade Laws, Tax Laws, Intellectual Property Laws, and Economic Laws],	Yes.	Article 9 of Judicial Examination Law
Non-lawyer patent professionals	8	Industrial Property Laws, Civil Code, Natural Science, English, Patent Act, Trademark Act, Code of Civil Procedure, one of [Design Protection Act, Copyright Act, Industrial Design, Design of Machine, Thermal Dynamics, Metallic Materials, Organic Chemistry, Chemical Reaction Engineering, Electro-magnetics, Electric Circuit Theory, Control Engineering, Data Structures, Fermentation Technology, Molecular Biology, Pharmacology, Pharmaceutical Manufacturing Chemistry, Textile Materials, and Concrete and Reinforced Concrete Engineering]	No.	Article 3 of Patent Attorneys Act

(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.

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	No.	
Non-lawyer patent professionals	No.	

(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	No.		
Non-lawyer patent professionals	No.		

- (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)

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	Korean Bar Association, and Korean Patent Attorneys Association	Yes.	Attorneys-at-law Act and Patent Attorneys Act
Non-lawyer patent professionals	Korean Patent Attorneys Association	Yes.	Patent Attorneys Act

(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 professionals	Code of conduct or vocational ethics (yes or no)	Law and/or rule basis
Lawyers	Yes.	Attorneys-at-law Act (Art. 85), Rules of Training of Attorneys (Rule 5)
Non-lawyer patent professionals	No.	N.A.

4. Questionnaire 1-4 (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	Criminal Code	Up to 7 million Won	Up to 3 years
Non-lawyer patent professionals	Patent Attorneys Act	Up to 10 million Won	Up to 5 years

(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) [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?
- (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	Attorneys-at-Law Act, Patent Attorneys Act	Yes	Yes	Yes	reprimand, negligence fine.
Non-lawyer patent professionals	Patent Attorneys Act	Yes	Yes	Yes	reprimand, negligence fine.

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)

(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 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

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.
- (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?	Both (Articles 315 and 344 of Code of Civil Procedure)	
What kinds of communications are protected?	Communications concerning matters which are secret under his/her professional duties.	
What kinds of documents are protected?	Documents describing matters which are secret under his/her professional duties.	
Is legal advice protectable?	Yes	
Is technical advice protectable?	Yes	
Difference if any between legal advice and technical advice	No difference.	

(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					

(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) Yes

(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-lawyer patent professional	Lawyer	Client	Foreign non-lawyer patent professional	Foreign Lawyer
Professional secrecy	Probably yes.	Probably yes.	Probably yes.	Probably yes.	Probably yes.
Communication	Probably yes.	Probably yes.	Probably yes.	Probably yes.	Probably yes.
Work product	Probably yes.	Probably yes.	Probably yes.	Probably yes.	Probably yes.
Legal advice	Probably yes.	Probably yes.	Probably yes.	Probably yes.	Probably yes.
Technical advice	Probably yes.	Probably yes.	Probably yes.	Probably yes.	Probably yes.

[Contents of the law/rule]

The relevant law does not explicitly mention foreign professionals as reproduced below. However, in view of the purport of the law, it is assumed that foreign patent professionals will be treated in the same manner as Korean patent professionals. There seems to be no court precedent which dealt with the issue.

Article 315 of Code of Civil Procedure (Rights to refuse to testify):

A witness may refuse to testify under any of the following instances:

- where an attorney-at-law, a patent attorney, ... or other person having a post responsible for keeping secret under laws and regulations ..., or a person who was in such a post, is questioned on matters which are secret under his professional duties
- where the witness is questioned on matters relating to a technical or professional secret.

Article 344 of Code of Civil Procedure (Obligation to produce documents):

The holder of a document may refuse to produce documents if the document describes the matters stated above (Article 315), and the duty to keep the secrecy has not yet been exempted.

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:

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

Denied					
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No relevant court decisions were located.

End