



**State Office for Inventions and Trademarks
Romania**

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Re: WIPO circular C.799, dated June 28, 2011, following SCP 16

Dear Sirs,

Thank you for sending us Circular C.7992, dated June 28, 2011, following SCP 16.

We are pleased to provide you the information on the legal situation of the confidentiality of the communications between Clients and Patent Advisors, as well as Clients and Attorneys under Romanian Law.

The Statute of the National Chamber of Industrial Property Advisors in Romania

According to Art. 1:

The National Chamber of the Industrial Property Advisors in Romania, hereinafter named the Chamber, is an apolitical non-governmental professional organization, without lucrative purpose, with juridical personality, carrying on its activity of public utility at national level, by self-financing, and is constituted and functions according to the provisions of the Government Ordinance no. 66/2000, amended according to Law no. 437/27.06.2002 and Law no. 331/2006, respectively. The Chamber has juridical personality from the date of 23 September, 2000, the date of coming into force of the Government Ordinance no. 66/2000 and has the registered office in the city of Bucharest,

According to Art. 16 paragraph 8:

The professional secret is of public order. The advisor is bound to keep confidentiality on any aspect of the cause entrusted to him. The obligation to keep the professional secret is absolute and unlimited in time. The advisor may not be bound under any circumstance and by any person to

disclose the professional secret. The obligation to keep the professional secret extends to all the activities performed by the advisor, his associates, his collaborators, the persons the advisor works with, in the exercise of his profession, as well as his employees. Any professional communication or correspondence between advisors, between advisor and client, between advisor and the authorities in the field, irrespective of the form in which it is made, is confidential. Failure to observe the provisions of the present article constitutes a serious infraction of discipline. There constitutes an exception from this regulation and implicitly exonerates the patent advisor of responsibility, the situation when the information was supplied upon request (through an official document) by an authority which, by the effect of the law, is entitled to request the disclosure, such as: Police Inspectorates, Prosecuting Magistracy, Law courts etc.

The National Chamber of Patent Advisors prepared a draft for the amendment of art. 16 paragraph 2 of the GO No. 66/2000, as follows:

2. In the exercise of his profession, the industrial property advisor is protected by the law, benefitting by legal professional immunity.

a) In order to ensure the professional secret, the documents and papers of professional nature, in the possession of the industrial property advisor on him, or at his headquarter or professional registered office, are inviolable. Searching the industrial property advisor, his domicile or headquarter or professional registered office may only be made by the public prosecutor based on a warrant issued in advance for this purpose, confirmed by the prime-prosecutor of the prosecutor's office attached to the territorial law court.

b) The industrial property advisor's telephone conversations may not be listened to or recorded by any technical means, nor may the professional correspondence be intercepted and recorded, with the exception of the conditions and procedure provided by the law.

3. The agreement between the industrial property advisor and his client may not be hindered or controlled directly or indirectly by a state body.

Obligations concerning the professional confidentiality can be found in the **Statute of the lawyer (attorneys) profession**, namely:

According to Art. 1

- (1) The lawyer profession is free and independent, with autonomous organization, functioning and leadership, established in the conditions provided for by the Law no. 51/1995 for the

organization and exercise of the lawyer profession, as republished, as it was amended and completed up to the date of adopting the present statute, hereinafter named the Law, and of the present statute.

- (2) The exercise of the lawyer profession is subordinated to the following fundamental principles:
 - a) lawfulness principle;
 - b) liberty principle;
 - c) independence principle;
 - d) autonomy and decentralization principle;
 - e) professional secret keeping principle.

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According to Art.8

- (1) The professional secret is of public order.
- (2) The lawyer is bound to keep the professional secret concerning any aspect of the cause entrusted to him.
- (3) The lawyer may not be obliged, under any circumstance and by any person, to disclose the professional secret. The lawyer may not be released from the professional secret either by his client or by another authority or person. The cases in which the lawyer is sued by the criminal law, disciplinarily, or where there exists an appeal in respect of the fees agreed upon, exclusively for strict necessities for his defense, constitute exceptions.
- (4) The obligation to keep the professional secret does not hinder the lawyer to use the information relating to an ex-client, if this has become public.
- (5) Failure to observe the provisions of the present article constitutes a serious infraction of discipline.

According to Art. 9

- (1) The obligation to keep the professional secret is absolute and unlimited in time. The obligation extends to all activities performed by the lawyer, his associates, the collaborating lawyers, the employed lawyers within the form of exercising the profession, to the relations to other lawyers, included.

- (2) The obligation to keep the professional secret is also incumbent on the persons the lawyer co-works in exercising the profession, as well as on his employees. The lawyer is obliged to inform his employees of this obligation.
- (3) The obligation to keep the professional secret is incumbent on all the lawyer profession authorities and on the employees thereof with regard to the information known in the exercise of the functions and attributions incumbent on them.

According to Art. 10

- (1) Any professional communication or correspondence between lawyers, between lawyer and client, between lawyer and the authorities in the field, irrespective of the form in which it was performed, is confidential.
- (2) In the relations with the lawyers admitted to a bar in a Member State of the European Union, the lawyer is bound to comply with the special dispositions provided for by the deontological code of the lawyers in the European Union.
- (3) In the relations with a lawyer admitted to a bar outside the European Union, the lawyer, before exchanging confidential information, must assure himself that in the country where the foreign colleague exercises his profession, there exist norms for ensuring confidentiality of correspondence, otherwise, he has to conclude a confidentiality agreement, or to ask his colleague about the acceptance in writing of an exchange of non-confidential information.
- (4) The correspondence and information transmitted between lawyers, or between lawyer and client, irrespective of the type of support, can by no means be brought as evidence in the law court, nor can they be deprived of the confidential character.

Conclusion

What follows from above is that Romania has some legal provisions on cross – border issues of professional confidentiality obligations for lawyers, but no such provisions for patent advisors that are not admitted to the bar.

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