

Confidentiality of Communication between Clients and their Patent Advisors

Republic of the Philippines

Scope of Client-Attorney Privilege

There exists some national legislation that relate to the scope of protection in client-attorney relationships. Those most applicable to patent advisors are as follows:

- If the patent advisor is a lawyer:
 - 1) the "attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of, or with a view to, professional employment." In addition, "an attorney's secretary, stenographer, or clerk" may not testify as to "any fact the knowledge of which has been acquired in such capacity" without first securing the consent of the attorney and the client. (Rule 130 of the Rules of Court, Section 24(b));
 - 2) It is likewise prohibited for any attorney-at-law or any person duly authorized to represent and/or assist a party to a case, who, "by any malicious breach of professional duty or of inexcusable negligence or ignorance, shall prejudice his client, or reveal any of the secrets of the latter learned by him in his professional capacity". The penalty for such revelation of secrets is *prisión mayor* in its medium period, or imprisonment from between 2 years, 4 months and 1 day to 4 years and 2 months, or a fine ranging from PhP40,000-PhP200,000, or both. (Revised Penal Code, Article 209, as amended by Republic Act No 10951).
- If the patent advisor is not a lawyer, the client may take in the provisions of the Civil Code of the Philippines, which pertinent provision states:

Article 21. Any person who willfully causes loss or injury to another that is contrary to morals, good customs, or public policy shall compensate the latter for the damage.

In addition to the above provisions, the Intellectual Property Office of the Philippines (IPOPHL) has recently implemented Memorandum Circular No. 2024-013, which establishes a Recognition System for Patent Representatives, classifies the types of Recognized Patent Representatives and the scope of services each may perform, and creates a Register of Recognized Patent Representatives. The Circular also provides for a Board responsible for setting registration and application schedules, ensuring compliance with requirements, issuing necessary notices and regulations, and overseeing IP-related training programs.