

## Confidentiality of Communications between Clients and their Patent Attorneys

### China

As regards patent representation, Article 18 of the Patent Law provides that “where any foreigner, foreign enterprise or other foreign organization without a habitual residence or business office in China files a patent application or handles other patent-related matters in China, he or it shall entrust a legally established patent agency with the application or such matters.” “Where any Chinese entity or individual files a patent application or handles other patent-related matters in China, he or it may entrust a legally established patent agency with the application or such matters.” “The patent agency shall abide by laws and administrative regulations, and handle patent applications and other patent-related matters as entrusted by its principals. In respect of the contents of the principal’s invention-creations, except for those that have been published or announced for patent application, the agency shall be obligated to keep them confidential. The specific measures for administration of the patent agencies shall be formulated by the State Council.”

Paragraph 2 of Rule 17 of the Implementing Regulations provides that “where an applicant entrusts a patent agency to file patent application and handle other patent-related matters before the patent administration department under the State Council, a power of attorney shall be submitted at the same time and indicate the authority of the entrustment.” Rule 18 provides that “where a patent agency is entrusted to file patent applications and handle other patent-related matters in China in accordance with Paragraph 1 of Article 18 of the Patent Law, the applicant or the patentee may handle the following matters on their own: (1) where the application claims priority, submission of a copy of the documents of the first patent application (hereinafter referred to as the prior application); (2) payment of fees ; and (iii) other matters prescribed by the patent administration department under the State Council.”

Rule 17 of the Regulations on Patent Representation provides: “Patent agencies and patent agents are obligated to keep secret the content of invention-creation which comes to their knowledge in the course of their practice, except for those for which the patent application has been published or announced.” Rule 26 provides: “Where patent agents commit any of the following acts, the patent administration department under the people's government of a province, an autonomous region or a municipality may order them to rectify within a specified time limit, issue a warning to them, and impose on them a fine of not more than 50,000 yuan; where the offenses are serious or where rectification is not made upon the expiration of the time limit, the patent administration department under the State Council shall order them to cease to undertake any new patent representation business for a period of six months to twelve months, until the revocation of the qualification certificate of patent agent: (1) failing to undergo recordation formalities in accordance with the provisions of these Regulations; (2) autonomously accepting commissioning for patent agency business; (3) engaging in patent agency business in more than two patent agencies at the same time; (4) acting as an agent for the patent application or patent case which he has examined, heard or dealt with in violation of the provisions of these Regulations; (5) divulging the content of the client's invention-creation, or filing for a patent or requesting for invalidating a patent in his own name.” “A patent agent who, in the course of practicing, divulges the content of the client's invention-creation that discloses a state secret or breaches a commercial secret, or provides false evidence for offering bribes to the staff of the relevant administrative or judicial authorities, shall be held liable in accordance with the provisions of the relevant laws and administrative regulations; and the qualification certificate of a patent agent shall be revoked by the patent administration department under the State Council.”