

# The Client-Patent Advisor Privilege SCP/14/2

*Encouraging creativity and innovation*



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## SCP/13/4 and SCP/14/2

Whether and how to protect confidential communication between a patent advisor and his/her client from forcible disclosure in a court or to a third party?

- country study
- international legal framework
- rationale for client-patent advisor privilege
- key findings and potential areas of further work



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# Country Study

## Common law countries

- Discovery
- Client-attorney privilege – exception to the general rule

## Civil law countries

- No discovery
  - Professional secrecy obligation
- Both systems recognize the desirability of the confidentiality of communications concerning legal advice between the legal advisor and the client



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## Confidential communications between a patent advisor and his client

### Common law countries

- In some countries non-lawyer patent advisors privileged
- Not in some other countries

### Civil law countries

- Non-lawyer patent advisors are bound by the professional secrecy obligation
- Refuse to testify in court? Refuse to produce relevant documents in court?



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Scope of privilege/secretcy obligation

Exception to privilege/secretcy obligation

Penalties for breach of secretcy/confidentiality

Treatment of foreign patent advisors

Qualification of patent advisors



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# International Legal Framework

- Paris Convention
- TRIPS Agreement
- General Agreement on Trade in Services (GATS)



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# Rationale for Client-Patent Advisor Privilege

- Ensure the quality of advice and administration of justice or impede justice by withholding certain information?
- Non-lawyer patent advisors merit the same treatment as lawyer patent advisors?
- Patent advisors who act as intermediaries between clients and patent offices and prepare documents for public deserve the client-patent advisor privilege?



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# Rationale for Client-Patent Advisor Privilege

Major obstacle at the international level

- The confidentiality of advice given by a patent advisor in one country is not necessarily recognized in another country.



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# Key Findings and Potential Areas of Future Work

“Client-attorney privilege” and “professional secrecy obligation”

- Different concepts but similar practical result
- Non-disclosure of confidential communications between lawyers and clients

Confidential communications between non-lawyer patent advisors and clients

- Differences in national laws
- Uncertainty



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# Key Findings and Potential Areas of Future Work

- “Client-attorney privilege” or “professional secrecy obligation” should apply to non-lawyer patent advisors?
- How confidentiality in one country should be recognized in another country?
- Options for addressing the international uncertainty in the current situation where different national laws and practices exist?
- Options in document SCP/13/4



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