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SCP/32 JPAA Statement

ACP

We, the Japan Patent Attorneys Association, as representatives of patent practitioners in Japan, strongly believe that the confidentiality of communications between clients and their patent advisors is a crucial legal concept, especially in the era of global business. It is essential for protecting sensitive trade secrets of client companies or patent holders from forced disclosure to third parties, but not for concealing material prior arts from the Patent Office.

As we repeatedly explained in previous SCP meetings, under the Japanese Civil Procedural Code, patent attorneys are not forced to give testimony if a given question is related to confidential information known through the course of their work. In Japan, only a person who has passed a competitive examination concerning IP laws including laws related to trade secrets can be registered as a patent attorney and has a sufficient ability to handle the confidential information of a client. Furthermore, the Japanese Patent Attorneys Act prescribes the confidentiality obligation of patent attorneys with penalties for violation of their duties. The purpose of these articles is, in essence, to protect clients' confidential information.

Since we now have the ability to communicate internationally through digital networks, secret information which is released in one country is publicly accessible in any country worldwide. Accordingly, there is a substantial risk to conduct business in a country where confidentiality is not appropriately protected, which can be a major factor to constrain lively economic activities in such a country. As a consequence, such countries suffer from the disadvantage that they cannot enjoy economic development. On the other hand, in a country providing a safe business environment where confidentiality is properly protected, investments from foreign countries are encouraged so that such countries can enjoy economic development.

In countries where the attorney-client privilege is granted on a comity basis, applicants of countries where the ACP is not granted may not be able to keep their communications with advisors in foreign countries confidential, which would be serious disadvantage to the business of the applicant in that country.

We firmly believe that so-called attorney client privilege is a crucial legal concept, and in this SCP meeting we should continue our discussions on this matter with the participation of every member country. We also believe the so-called "Soft Law Approach", which establishes a minimum standard first, is the best way of advancing this discussion.

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