

Confidentiality of Communication between Clients and their Patent Advisors

Poland

In Poland, there is a general rule in the industrial property law which provides that in proceedings before the patent office in matters related to the filing of applications and maintenance of the protection of inventions, utility model, industrial designs, trademarks, geographical information and topographical information, parties can be represented by a patent or trademark agent or by a person rendering cross-border services. In proceedings before administrative and civil courts, including before the Supreme Court, in cases involving intellectual property matters, parties can be represented by barristers, attorneys at law or patent and trademark agents.

Pursuant to Article 14 (1) of the Polish Act on Patent Attorneys of 2001, patent attorneys admitted to the bar are obliged to keep the confidentiality of any information acquired in the course of practicing the profession. Accordingly, Polish patent attorneys are entitled to refuse to testify before the courts, since the applicable provision of the civil procedure code granted such a right. The patent attorney's obligation to keep the professional confidentiality of the facts obtained during provision of assistance in IP matters cannot be waived.

As regards persons rendering cross-border services, there is a general principle provided in the legal provisions regulating various professions, including in the Act on Patent and Trademark Agents. According to that principle, such persons are entitled to perform any duties of barristers and attorneys at law or patent trademark agents, if they are qualified to perform such duties in their mother countries, but only within the limits of rights provided in respect of that profession in the laws of their own countries. This means that foreign advisors in Poland enjoy confidentiality privilege only to the extent they enjoy it in their home countries. In order to be able to enjoy those rights, such persons have to meet some formal requirements stipulated by the Polish law, such as submitting a certificate confirming that they are qualified to practice their profession in their country of origin, a document indicating his or her citizenship, and a copy of the civil liability insurance. It is advisable that such persons have communication skills in the Polish language. That general rule applies to citizens of the EU Member States, while the principle of reciprocity applies to persons of non-EU Member States rendering cross-border services.

A European patent attorney, who is not registered as a Polish patent attorney, is not entitled to represent clients before the Polish courts and is not admitted to the Polish bar. Therefore, in general, he cannot refuse testifying on confidential matters under professional secrecy before the Polish courts.