

Republic of Korea

The law in the Republic of Korea protects the confidentiality of communications between clients and their patent advisors by civil and criminal law. Article 26 (Duty to Maintain Confidentiality) provides that “no attorney-at-law or former attorney-at-law shall disclose any confidential matter that he/she has learned in the course of performing his/her duties: provided, that the same shall not apply to cases where such disclosure of confidential matters is especially prescribed otherwise by Acts.” Article 23 (Crime as to Use by Stealth and Divulgence) provides that a “patent attorney or a person who was a patent attorney divulges or uses by stealth without any justifiable reason the secret of an invention or design of an inventor, a designer, or an applicant for patent or registration, which he has learned in the course of performing his duty, he shall be punished by imprisonment for not more than five years or a fine not exceeding ten million won.”

The obligation also applies to the forced disclosure of documents. Article 112 (Professional Secrets and Seizure) states that a “person who is or was a licensed advocate, patent attorney, notary public, certified public accountant, licensed tax accountant, public scrivener, doctor, herb doctor, dentist, pharmacist, druggist, midwife, nurse, or a religious functionary may resist seizure of articles held in his custody or possession in consequence of mandate he has received in the course of his profession and which relates to secrets of other persons: provided, that this shall not apply if the principal has consented to such seizure, or if it is necessary for important public interests.” Article 149 provides the same privilege to refuse to testify in respect to facts of which he has obtained knowledge in consequence of a mandate he has received in the course of his profession.

However, Article 315 (Right to Refuse Testimony) provides that the right to refuse testimony shall “not apply to the case where the witness has been exempted from a liability for keeping secret” and Article 344 (Obligation to Submit Document) provides for the case of forcible disclosure:

- “(1) When the party holds the document quoted in a lawsuit;
- (2) When the applicant holds a judicial right to ask the holder of the document to transfer or show it to him; and
- (3) When the document has been prepared for the benefit of the applicant, or prepared as to a legal relationship between the applicant and the holder of document: Provided, that the same shall not apply to the case falling under any one of the following causes”.