

**Submission to the Standing Committee on the Law of Patents by
Intellectual Property Division of the Business Registrations and
Licensing Agency (BRELA)**

August 30th, 2011

BACKGROUND

Intellectual Property Division of the Business Registrations and Licensing Agency is charged with administration of the Patents Registration Act Cap 217 R.E. 2002 and the Trade and Service Marks Act Cap 326 R.E. 2002.

The Division performs quasi judicial functions through litigation on opposition to applications for registration of Trade and Service Marks. The said litigation include expungement proceedings instituted with a view to removing a registered Trade or Service Mark from the Register. In case of proceedings instituted at the High Court in terms of Section 2, 35, 36 and Rule 66 of the Act and Regulations 2000, a designated Deputy Registrar of Trade and Service Marks shall enter appearance.

Apparently, the Division is engaged in the process of enactment of the envisaged Industrial Property Act of the United Republic of Tanzania save for Zanzibar that had already enacted its legislation on Industrial Property. Zanzibar enjoys an independent jurisdiction on intellectual property matters.

The Division therefore had thought it pertinent to share some practical experience on Confidentiality Communication between Clients and their respective Patent advisors, attorneys or, Agents as the case may be.

It is indeed important to discuss the critical issues on communication made between clients and their advisors since treatment of confidential information may differ in different parts of the world. Nevertheless, the clients confidential communications to their advisors need to be protected through an effective and efficient system.

CONFIDENTIALITY OF COMMUNICATION BETWEEN CLIENT AND THEIR PATENT ADVISORS

It is common practice that a researcher or potential applicant for grant of patent would seek advice from a patent attorney or agent as the case may be.

In the course of an exchange of information between the two either in any form of communication including verbal or written in both hard and electronic format confidentiality is of paramount importance.

Unfortunately not all clients are aware that transactions conducted or engaged in between themselves and their respective advisors need to be so transacted in contractual manner through signing Confidentiality agreement to bind their respective deal in absence of which a party may escape responsibility for disclosure of otherwise limited or restricted information between the parties.

In Tanzania for instance, a Patent attorney or Agent shall file a patent application at the Patent Office for and on behalf of his or her Client together

with Patent Form No.1 which in essence is an authorization instrument issued by the client in all respects pertaining to prosecution of that application.

Despite the fact that there is no formal confidentiality agreement signed between the patent office and the Patent attorney on such filed applications for grant of patent it is trite rule that the substantive information pertaining to the patent document is treated confidential until such time that that application has been published. The patent office in Tanzania is a legal entity hence capable of suing or being sued in Court. In terms of section 2 of the Patent Registration Act Cap 217 R.E. 2002 "Court" means the High Court.

It is our considered opinion that even in circumstances where neither written nor verbal confidentiality agreement was drawn and entered into between the parties to patent application information, either party that has suffered from any undue disclosure of such information and resulted in damages; that party is entitled to sue for recovery in damages upon successful litigation.

Given the magnitude of the consequences of confidentiality breach Clients should always protect themselves and their confidential information by signing confidentiality agreement that shall govern communication in favour of rights and obligations as drawn or capable of being inferred therein.

The practical experience in Tanzania is however, influenced by the adversarial System applicable in Common Wealth Countries as perhaps, opposed to the practice in Continental Europe.

The Intellectual Property Policies of the Sokoine University of Agriculture (SUA) and the University of Dar es Salaam both in Tanzania, provide for

Confidentiality between researchers and the institutions on access to information that belong to the respective institution of which any disclosure to third parties shall be construed breach of confidentiality agreement unless upon given prior express consent except published information open to public consumption.

In the case of instituted proceedings by either party, the Court shall take judicial notice to the effect that the clients representative has and is duty bound to maintain confidentiality in respect of Communication made available in the cause such Client "Patent" Advisor relationship. There are no specific provisions in respect of Cross-border Communication. However, it is incumbent upon an offended party to seek redress or remedies depending on the place where the cause of action arose.

In the contemporary Information Communication Technology (ICT) era, communication of otherwise confidential information exchange hands via e-mails, fax or phones. Unless evidence is available to implicate the advisor in respect of any confidential information disclosed to an unauthorized or a third party, such accusation shall not sustain.

An advocate in Tanzania is not bound by law to disclose confidential information held by him or her in the cause of his or client relationship.