

Professional Confidentiality of Swiss patent attorneys: strict requirements

Professional confidentiality obligation that binds Swiss patent attorneys and professional representatives before the European Patent Office is particularly strict and goes beyond professional confidentiality obligation in ordinary commercial relations.

In Switzerland, on the basis of *Article 10 of the Swiss Patent Attorney Act (of 20 March 2009) (SR 935.62)*, Swiss patent attorneys are bound by professional confidentiality in relation to their clients. In the framework of professional advice and representation in patent cases, patent attorneys are entrusted with confidential information concerning invention that has not yet been filed or are commercial secrets. The clients are predominantly interested that third parties do not obtain knowledge of that confidential information. That's why a client must have complete confidence in a patent attorney in professional confidentiality matters and be able to present to him/her with all important facts without obligation to execute a nondisclosure agreement.

Article 10 of the Swiss Patent Attorney Act binds patent attorneys to maintain confidentiality concerning all secrets that are entrusted to them in their professional capacity or which come to their knowledge in the course of their professional activities. The professional confidentiality is unlimited in time and applied to everyone. However, information that has been shared with a patent attorney as private or which is publicly known are excluded from professional confidentiality obligation.

Violation of professional confidentiality by the patents attorneys, or by the persons assisting them, is punishable on the basis of *Article 321 paragraph 1 of the Swiss Criminal Code (of 21 December 1937) (SR 311.0)*. Moreover, patent attorney has a right to refuse to testify in criminal proceedings according to *Article 171 of the Swiss Criminal Procedure Code (of 5 October 2007) (SR 312.0)*. In practice, the legal status of patent attorneys concerning professional confidentiality is comparable with that of lawyers.

Additionally, professional confidentiality is regulated by *Rule 153 of the European Patent Convention*. Professional confidentiality protection is similar to that provided by the Swiss legislator. According to this Rule; where advice is sought from a professional representative in his capacity as such, all communications between the professional representative and his client or any other person are permanently privileged from disclosure in proceedings before the European Patent Office.

Confidential information that you forward to your Swiss patent attorney and your professional representative before EPO is therefore particularly well protected, even without explicit nondisclosure agreement.