

Monsieur Martel,

My comment regards Section 3.8, "3.8 Business transactions with client".

Regarding specifically Section 3.8(2), we should bear in mind the Fundamental canon of the Proposed Code (namely integrity and competence).

In my opinion, the Code of Ethics should require that a patent agent as well as his or her employees (such as technical assistants) assign free of charge to the client any Intellectual Property rights related to any work concerning the protection of an invention for the client. This is not present in the proposed Code of Ethics or clearly mandated in the IPIC Code of Ethics. With respect to ownership in this context, there should be no conflict of interest because the client's interests are clearly protected.

It would be easy to assume that a patent agent should not be encroaching on the work of the client's inventors, and should never be a co-inventor because doing so is crossing a line between advisor and creator. Being named as an inventor in a patent application is an honor and a distinction for most inventors. No patent agent should want to dilute the list of inventors with his or her name and disturb the sense of distinction among the client's inventors.

However, the law requires accurate designation of inventors, and intentionally falsely designating or withholding the name of an inventor can invalidate a patent.

It is true that few patent agents list their names as co-inventors, and many conceive of improvements or alternate embodiments. This is because most patent agents, having a clear idea of an improvement or an alternate embodiment when questioning inventors, prompt the inventors to propose the improvement or alternate embodiment. Patent agents understand the requirement of disclosure and of claim support in patent applications, and having normally a degree in the sciences or engineering, they are well placed to suggest such improvements or alternate embodiments. However, there can be circumstances when the inventors fail to respond as intended. The question is whether the patent agent is acting with integrity and competence to leave out of the patent application such improvement or alternate embodiment that the client does not provide when prompted, when the consequence for doing so is likely to be a less effective patent.

The patent agent must conduct an exercise in determining the inventors with the client for each patent application. The client normally relies on the patent agent for this exercise that can affect the validity of the patent. If the patent agent is given this responsibility to determine accurately inventorship among the client's inventors, why should a third party professional be required (as set out in proposed section 3.8) for the exercise under the circumstance that the patent agent, following the same analysis used for the client's inventors, is determined to be a co-inventor?

The Code of Ethics should prevent a patent agent from actively seeking to add his or her name as a co-inventor in a patent application prepared for a client because doing so can disturb the sense of distinction among the client's inventors, however, when the circumstances are appropriate, the Code of Ethics should support that patent agents can practically contribute to the IP rights of their clients.

The current formulation in the proposed Code of Ethics and in the IPIC Code of Ethics to advise a client to seek third party professional advice as to whether a new agent should be retained, could lead a patent agent to behave in a way that is with less integrity and/or with less contribution of competence,

so as to avoid referring the client to a new agent. This would be an unfortunate consequence of the proposed Code.

Sincerely,

James Anglehart

**James Anglehart**

Agent de brevets/Patent Agent

**/ Anglehart et al. /**

Propriété intellectuelle/Intellectual Property