JAPAN PATENT ATTORNEYS ASSOCIATION

October 23, 2026

SCP/38 JPAA Statement

Agenda 8. Confidentiality of communications between clients and their patent advisors

*− Study on the categories of professionals who enjoy protection against forcible disclosure of confidential communications between clients and their patent advisors in court proceedings under national/regional laws (Document **SCP/38/7**)*

JPAA Statement on SCP/38/7

(1) JPAA expresses its appreciation to the Secretariat for preparing this document. JPAA has supported the Committee's work on this topic since 2010 and reiterates that support.
We particularly welcome the functional approach in paragraphs 12 and 18 of the document SCP/38/7 Annex, which recognizes that privilege in common law systems and professional secrecy combined with rights to refuse testimony and document production in civil law systems serve the same objective. This reflects the reality of users in jurisdictions without discovery.

(2) For the clients our members represent—including universities, start-ups, and life-science companies frequently involved in cross-border activities, including litigation—the main problem remains cross-border recognition of protection afforded to confidential communications between clients and patent advisors. As the document rightly observes, equivalent protection may not necessarily be recognized in another jurisdiction, and differences among national approaches affect the predictability of protection in cross-border situations (paragraphs 44 and 162). The JPAA hopes that discussions on this issue will advance within the SCP.

(3) In bridging the gaps between differing legal traditions among Member States, JPAA believes that establishing minimum standards through a "soft law approach" is the most practical and optimal way forward to advance this discussion.