

**[IPO MEMORANDUM CIRCULAR NO. 01, s. 2003,
January 29, 2003]**

**PROHIBITION OR RESTRICTION OF THE PUBLICATION OF A
PATENT APPLICATION**

This concerns the implementation of Section 44, particularly Section 44.3 of Republic Act No. 8293 otherwise known as the Intellectual Property Code of the Philippines (IP Code) which provides that:

"Sec. 44. Publication of Patent Application — xxx

44.3 The Director General, subject to the approval of the Secretary of Trade and Industry, may prohibit or restrict the publication of an application, if in his opinion, to do so would be prejudicial to the national security and interests of the Republic of the Philippines."

Accordingly, the following procedure shall be followed:

1. On his/her own initiative, or, on motion of applicant subject to payment of the corresponding fee under the IPO Fee Structure (Reference Code 129), the Examiner may determine whether to prohibit or restrict the publication of a patent application.
2. The Examiner may, *motu proprio*, submit a recommendation to the Director of Patents stating the grounds, which form the basis of his finding that the publication of the patent application would be prejudicial to the national security and interests of the Republic of the Philippines. The Director of Patents shall evaluate the recommendation to the Director General.
3. In case of a motion filed by an applicant, the Examiner shall decide the same on the basis of the allegations thereof regarding national security and interests within fifteen (15) working days. The applicant may file an appeal to the Director of Patents from an adverse decision of the Examiner within two (2) months from the mailing date of the decision. The Director of Patents shall decide the appeal within fifteen (15) working days. The applicant may file an appeal to the Director General within thirty (30) days from receipt of the decision of the Director of Patents. The Director General shall decide the appeal within fifteen (15) working days. For this purpose, the provisions of the Uniform Rules on Appeal shall not apply.

Appeals to the Director of Patents and the Director General shall be in the form of an Appeal Memorandum and subject to the payment of the corresponding appeal fee under the IPO Fee Structure (Reference Codes 124 and 128, respectively). No other pleadings shall be submitted unless directed otherwise.