Republic of the Philippines
Department of Finance
Securities and Exchange Commission
Pasay City, Philippines

Intellectual Property Association of the Philippines, Inc.
Complainant-Appellant,

versus

SEC En Banc Case No. 01-14-313

Patrick Mirandah Co. Philippines, Inc.
Respondent-Appellee.

DECISION

Pending consideration by the Commission *En Banc* is a Memorandum of Appeal dated 27 December 2013[1] (Appeal) filed by the Complainant-Appellant, Intellectual Property Association of the Philippines, Inc. (IPAP) from the Resolution dated 11 December 2013[2] (Resolution) issued by Director Jose P. Aquino (Director Aquino) of the Securities and Exchange Commission Enforcement and Investor Protection Department (SEC-EIPD) finding a lack of probable cause to pursue further an investigation against Respondent-Appellee, Patrick Mirandah Co. Philippines, Inc. (PMC Philippines) for engaging in illegal practice of law in violation of Section 17 of Batas Pambansa Blg. 68 or the Corporation Code of the Philippines (Corporation Code).

This case originated from a Complaint dated 24 April 2013[3] (Complaint) filed by IPAP on 3 June 2013 with the Director of the Securities and Exchange Commission Enforcement and Prosecution Department for illegal practice of law and alleged violations of Section 17 of the Corporation Code, in relation to Article XII Section 14, paragraph 2, of the 1987 Philippine Constitution[4] and Rule 138 of the 1997 Revised Rules of Court.[5]

1 Memorandum of Appeal dated 27 December 2013.
2 *Id.*, Annex "A".
3 Memorandum of Appeal, Annex "B" (Complaint entitled "Intellectual Property Association of the Philippines, Inc. versus Patrick Mirandah Co. Philippines, Inc.").
4 Section 14. The sustained development of a reservoir of national talents consisting of Filipino scientists, entrepreneurs, professionals, managers, high-level technical manpower and skilled workers and craftsmen in all fields shall be promoted by the State. The State shall encourage appropriate technology and regulate its transfer for the national benefit.
The practice of all professions in the Philippines shall be limited to Filipino citizens, save in cases prescribed by law.
5 *Section 2. Requirements for all applicants for admission to the bar.* — Every applicant for admission as a member of the bar must be a citizen of the Philippines, at least twenty-one years of age, of good moral character, and resident of the Philippines; and must produce before the Supreme Court satisfactory evidence of good moral character, and that no charges against him, involving moral turpitude, have been filed or are pending in any court in the Philippines.

In its Notice of Conference dated 10 June 2013,[6] SEC-EIPD Hearing Officer Atty. Ben Joshua A. Baltazar conducted a conference to clarify and verify the allegations in the Complaint, and directed IPAP to file additional evidence to support its allegation of illegal practice of law.

On 2 September 2013, IPAP filed its Manifestation and Compliance dated 30 August 2013[7] (Compliance).

The SEC-EIPD sent a letter to the IPO requesting for an opinion on the issues raised by IPAP in its Complaint with respect to the illegal practice of law. On 3 October 2013, the SEC-EPID received IPO's opinion (IPO Opinion).

In its Resolution, the SEC-EIPD ruled, as follows:

> Withal, the Department has reviewed and analyzed the allegations in the Complaint and its attached documents and has found no *prima facie* basis to investigate the matter further.
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> Please be guided accordingly.[8]

On 2 January 2014, IPAP filed its Notice of Appeal dated 27 December 2013 and Memorandum of Appeal dated 27 December 2013.

On 27 January 2014, PMPCI filed its Reply dated 27 January 2014 to IPAP's Appeal.

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Section 5. Additional requirements for other applicants. — All applicants for admission other than those referred to in the two preceding section shall, before being admitted to the examination, satisfactorily show that they have regularly studied law for four years, and successfully completed all prescribed courses, in a law school or university, officially approved and recognized by the Secretary of Education. The affidavit of the candidate, accompanied by a certificate from the university or school of law, shall be filed as evidence of such facts, and further evidence may be required by the court.

No applicant shall be admitted to the bar examinations unless he has satisfactorily completed the following courses in a law school or university duly recognized by the government: civil law, commercial law, remedial law, criminal law, public and private international law, political law, labor and social legislation, medical jurisprudence, taxation and legal ethics.

Section 6. Pre-Law. — No applicant for admission to the bar examination shall be admitted unless he presents a certificate that he has satisfied the Secretary of Education that, before he began the study of law, he had pursued and satisfactorily completed in an authorized and recognized university or college, requiring for admission thereto the completion of a four-year high school course, the course of study prescribed therein for a bachelor's degree in arts or sciences with any of the following subjects as major or field of concentration: political science, logic, english, spanish, history and economics.

6 Memorandum of Appeal, Annex "D."
7 Memorandum of Appeal, Annex "B."
8 *Id.*, at 9.

On 6 May 2014, IPAP filed a Motion to Admit dated 30 April 2014, praying for leave to admit and consider the Rejoinder dated 30 April 2014 (Rejoinder) in resolving the appeal.

On 13 June 2014, PMC Philippines filed its Opposition to Complainant-Appellant's Motion to Admit (Re: Motion to Admit dated April 30, 2014) dated 13 June 2014.

In its Appeal, IPAP prays that the Commission reverse and set aside the Resolution and revoke PMC Philippines' registration for engaging in the unlawful practice of law in the Philippines. IPAP raises the following assignment of errors in its Appeal:

1. Director Aquino erred in disregarding existing jurisprudence and the evidence on record that PMC Philippines illegally engages in the practice of law;
2. The Commission cannot sanction PMC Philippines' corporate practice of a profession; and
3. Director Aquino's failure to revoke PMC Philippines' registration violates the Corporation Code.[9]

We find the Appeal bereft of merit.

The evidence on record is insufficient to prove that PMC Philippines illegally engages in the practice of law or corporate practice of the legal profession.

In its Appeal, IPAP argues that "it is clear and uncontroverted that PMC Philippines is engaged in the illegal practice of law," to wit:

> 18. It is clear that the preparation and prosecution of patent applications, such as those offered by PMC Philippines and its foreign affiliates and directors, constitute practice of law as the Supreme Court categorically ruled in *Philippine Lawyer's Association v. Agrava*, ...
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> 22. Evidence on record shows that Patrick Mirandah Co., which is a foreign corporation, maintains an office in the Philippines, through PMC Philippines, where it holds out itself to the international public that it renders intellectual property law, including providing litigation support in intellectual property disputes.
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> x x x

9 *Id.* at 6.

> 23. Furthermore, Patrick Mirandah Co.'s directors Denise Mirandah and Ian Rodney Mirandah are likewise engaged in the practice of law in the Philippines as they claim that they give advice in litigation and dispute resolution. Thus, EIPD Director Aquino wantonly erred in asserting that no specific individuals connected to Patrick Mirandah Co. were identified, and no clear act of practicing law was ever attributed to these individuals.
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> 24. To be sure, Patrick Mirandah Co.'s website and company registrations in Malaysia and Singapore show that Patrick Mirandah Co. and its foreign directors are engaged in the practice of law in the Philippines. These also show PMC Philippines' attempt to mislead this Honorable Commission to allow registration by misrepresenting its services as mere "consultancy." PMC Philippines, with its historical background, cleary intends to illegally engage in the practice of law in the Philippines.[10]

In the Resolution, the SEC-EIPD found lack of probable cause to pursue further an investigation against PMC Philippines for engaging in illegal practice of law, and held as follows:

> At its core, the Complainant avers that PMC (PMC Philippines) is a corporation engaged in the unlawful practice of law before the IPO by prosecuting National Phase Entry patent applications, industrial design applications and trademark registration applications for its clients. To prove this, Complainant makes reference to a matrix on the IPO's website indicating PMC as agent involved in several pending applications before the said office. Furthermore, Complainant also points out that PMC advertises itself on its own website as a "boutique practice providing services in all areas of Intellectual Property Law for the countries we cover."
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> However, these two activities of processing various intellectual property applications before the IPO as an agent and marketing itself as a provider of services in Intellectual Property Law on its website are insufficient to support a finding of unlawful practice of law to warrant the revocation of its corporate registration."[11]
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> x x x
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> Upon a careful weighing of the allegations and evidence presented by the Complainant in the Complaint and Compliance, the Department finds a lack of probable cause to pursue further an investigation against

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10 Memorandum of Appeal, 10-12.
11 Resolution, 4.

PMC for engaging in the illegal practice of law in violation of Section 17 of the Corporation Code.

We agree with the findings of the SEC-EIPD.

We reviewed the following documentary evidence offered by IPAP to prove that PMC Philippines was engaged in the illegal practice of law:

(a) Print outs from the website bearing a logo "Mirandah connecting Asia" and describing Patrick Mirandah Co. (PMC), a foreign corporation, (PMC's Website), i.e., print outs of the following pages: Corporate Profile, Management Team, Specialists in Malaysia, Specialists in India, Specialists in Singapore, Specialists in Cambodia, and Malaysia Overview;[12]

(b) Documents obtained from the IPO's website:

   i. Patent applications list, which states that PMC Philippines is an "Agent" of certain applicants for certain international and domestic patent applications;[13]

   ii. An industrial design publication application, which states that PMC Philippines is the "Attorney/Agent" of the applicant, Komatsu Ntc Ltd [JP].[14]

   iii. A trademark application, which states that PMC Philippines is a "Representative/Agent" of the applicant, Aztec Exchange Limited;[15]

(c) Print outs from the website of the Companies Commission of Malaysia (CCM) of certain corporate information[16] of Patrick Mirandah Co., a sole proprietorship in Malaysia;[17]

(d) A print out from the CCM website of certain corporate information of Patrick Mirandah Co. (M) Sdn. Bhd., a private limited company that is engaged in providing services on the registration of intellectual property rights; [18]

(e) A certified copy of the Business Profile of Patrick Mirandah Co. Pte. Ltd.,[19] a company registered in Singapore, obtained from the website of Singapore's Accounting and Corporate Regulatory Authority.

A perusal of the evidence on record shows that PMC Philippines acted as "Agent" or "Attorney/Representative" of applicants of certain trademark, patent and industrial design applications filed with the IPO. As confirmed by the IPO in its Opinion and as

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12 Complaint, Annex "B," and Manifestation, Annexes "A" and "A-7"
13 Complaint, Annex "C."
14 Complaint, Annex "D."
15 Complaint, Annex "E."
16 Business Information, Corporate Information and Information of Current Owner.
17 Manifestation, Annex "B".
18 Manifestation, Annex "B-1," 2.
19 Manifestation, Annex "C."

discussed in the Resolution,[20] applicants of patent, trademark or copyright applications may appoint an agent or representative who may or may not be lawyers.

Thus, while we do not dispute that certain acts before the IPO would constitute the practice of law as discussed in *Agrava*, we are unable to conclude, based on the evidence presented in this case, that acting as agent or representative of applicants in certain IPO applications constitute the practice of law, considering that these roles can be undertaken by persons who are not members of the Philippine bar.

Furthermore, it is noteworthy that, as discussed in the Resolution,[21] acting as such agent/representative appears to be in line with PMC Philippines' primary purpose in its Articles of Incorporation, to wit:

> To engage in, conduct, and carry on the business of providing consultancy and technical services in the area of intellectual property rights; <u>to act as agents, patent agents, trademark agents and copyright agents, to provide services related to the foregoing</u>.

IPAP heavily relies on the PMC Website printouts to support its claim that PMC Philippines is engaged in the practice of law in the Philippines. A review of these printouts shows that *PMC* internationally markets or promotes itself as providing services in "all areas of Intellectual Property Law" in several Asian countries. However, this Commission did not find proof of the specific activities engaged in by PMC Philippines before the IPO or in the Philippines in general, which would warrant a finding of unlawful practice of law.

The professional profiles in the PMC Website of Denise Mirandah (located in Singapore) and Ian Rodney Mirandah (located in Malaysia) are also insufficient to show that PMC Philippines engages in the practice of law, in the absence of proof of the specific activities undertaken by these individuals that may be construed as unlawful legal practice.

As correctly noted in the Resolution:

> Neither can PMC's statement on its website that it provides "services in all areas of Intellectual Property Law" be taken to mean that it is engaged in the unauthorized practice of law. While the language employed may encompass acts which are universally accepted as included in the practice of law, such as appearing in a Court of Law and handling a case involving Intellectual Property Law, this Department cannot speculate as to whether PMC in fact does. The Complainant was given ample time to provide addi-

[20] Resolution, 3-5.
[21] Resolution, 6.

tional evidence on this matter but obstinately refused to do so and was content to rely on the website advertisement.[22]

We likewise agree that IPAP's reliance on *Philippine Lawyer's Association v. Agrava (*Agrava*)*[23] is misplaced.

In *Agrava*, the question before the Supreme Court was whether the Director of the Philippine Patents Office (Patents Office) can require lawyers to take an examination before being allowed to practice in said office. In this regard, the Supreme Court ruled that the Patents Office Director had no authority to do so because the Supreme Court has the exclusive and constitutional power with respect to admission to the practice of law, which would include such appearance before the Patent Office, the representation of applicants, oppositors, and other persons, and the prosecution of their applications for patent, their oppositions thereto, or the enforcement of their rights in patent cases. The relevant portions of *Agrava* are, as follows:

> It is the contention of the petitioner Philippine Lawyer's Association that one who has passed the bar examinations and is licensed by the Supreme Court to practice law in the Philippines and who is in good standing, is duly qualified to practice before the Philippines Patent Office, and that consequently, the act of the respondent Director requiring members of the Philippine Bar in good standing to take and pass an examination given by the Patent Office as a condition precedent to their being allowed to practice before said office, such as representing applicants in the preparation and prosecution of applications for patent, is in excess of his jurisdiction and is in violation of the law.
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> The Supreme Court has the exclusive and constitutional power with respect to admission to the practice of law in the Philippines and to any member of the Philippine Bar in good standing may practice law anywhere and before any entity, whether judicial or quasi-judicial or administrative, in the Philippines. Naturally, the question arises as to whether or not appearance before the patent Office and the preparation and the prosecution of patent applications, etc., constitutes or is included in the practice of law.
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> The practice of law is not limited to the conduct of cases or litigation in court; it embraces the preparation of pleadings and other papers incident to actions and social proceedings, the management of such actions and proceedings on behalf of clients before judges and courts, and in addition, conveying. In general, all advice to clients, and all action taken for them in

22 Resolution, 7-8.
23 G.R. No. L-12426, 16 February 1959.

> matters connected with the law corporation services, assessment and condemnation services contemplating an appearance before a judicial body, the foreclosure of a mortgage, enforcement of a creditor's claim in bankruptcy and insolvency proceedings, and conducting proceedings in attachment, and in matters of estate and guardianship have been held to constitute law practice as do the preparation and drafting of legal instruments, where the work done involves the determination by the trained legal mind of the legal effect of facts and conditions. (5 Am. Jur. p. 262, 263). (Emphasis supplied).
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> In our opinion, the practice of law includes such appearance before the Patent Office, the representation of applicants, oppositors, and other persons, and the prosecution of their applications for patent, their oppositions thereto, or the enforcement of their rights in patent cases. In the first place, although the transaction of business in the Patent Office involves the use and application of technical and scientific knowledge and training, still, all such business has to be rendered in accordance with the Patent Law, as well as other laws, including the Rules and Regulations promulgated by the Patent Office in accordance with law. Not only this, but practice before the Patent Office involves the interpretation and application of other laws and legal principles, as well as the existence of facts to be established in accordance with the law of evidence and procedure.

The issue in this case, on the other hand, is whether IPAP was able to present proof that PMC Philippines engages in activities that would constitute unlawful practice of law, which would warrant the extreme penalty of revocation of its registration.

We do not dispute the pronouncements of the Supreme Court in *Agrava* on what constitutes the practice of law. However, IPAP's reliance on Agrava to support its allegations against PMC Philippines does not hold water. Based on the records of this case, IPAP failed to prove the specific activities engaged in by PMC Philippines that would constitute illegal practice of law. As discussed above, the evidence on record merely shows that, in line with its primary purpose in its Articles of Incorporation, PMC Philippines appears to act as "Agent" or "Attorney/Representative" for certain patent, trademark and industrial applications before the IPO, which roles can be undertaken by non-lawyers.

IPAP likewise contends that this Commission cannot sanction PMC Philippines' corporation practice of a profession.[24] IPA argues that PMC, which is a foreign corpora-

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[24] Appeal, 16.

tion affiliated with PMC Philippines, acted as an agent for its clients before the IPO.[25] In this regard, IPAP concludes that *PMC* is clearly engaged in the practice of profession in violation of the ruling in the case of *Doctors Alfalfara et al. v. Acebedo Optical*.[26] IPAP further argues that PMC Philippines, as a corporation, actually provides services that constitute the practice of the legal profession.

As discussed above, nothing on record shows that PMC Philippines engaged in activities that would constitute the practice of law, or that PMC Philippines engages in the corporate practice of the legal profession. Thus, we do not find any basis to reverse or set aside the SEC-EIPD's ruling.

The evidence on record fails to support the revocation of PMC Philippines' certificate of registration.

Pursuant to Section 5.1 of Republic Act No. 8799, or the Securities Regulations Code (SRC), this Commission has the power to suspend, revoke, after proper notice and hearing the franchise or certificate of registration of corporations, partnerships or associations, upon any of the grounds provided by law.

In its Appeal, IPAP argues that SEC-EIPD Director Aquino is mandated to revoke PMC Philippines' certificate of registration in view of PMC Philippines' violation of existing law and jurisprudence by engaging in the practice of law.[27] In this regard, IPAP cites Section 17 of the Corporation Code as the ground provided by law for the revocation of PMCPI's certificate of registration, to wit:

> *Sec. 17. Grounds when articles of incorporation or amendment may be rejected or disapproved.* - The Securities and Exchange Commission may reject the articles of incorporation or disapprove any amendment thereto if the same is not in compliance with the requirements of this Code: Provided, That the Commission shall give the incorporators a reasonable time within which to correct or modify the objectionable portions of the articles or amendment. The following are grounds for such rejection or disapproval:
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> x x x
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> 2. *That the purpose or purposes of the corporation are patently unconstitutional, illegal, immoral, or contrary to government rules and regulations*;

We do not agree with IPAP's contention.

We reiterate the primary purpose of PMCPI under its Articles of Incorporation below:

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25 Appeal, 17.
26 G.R. No. 148384, 17 April 2002.
27 Resolution, 20.

> To engage in, conduct, and carry on the business of providing consultancy and technical services in the area of intellectual property rights; to act as agents, patent agents, trademark agents and copyright agents, to provide services related to the foregoing.

Nothing in the foregoing purpose can be interpreted as patently unconstitutional, illegal, immoral or contrary to the government rules and regulations, which would warrant the suspension or revocation of its registration under the SRC, or at the very least, the amendment of its articles of incorporation, pursuant to Section 17 of the Corporation Code.

Moreover, as discussed above, there is insufficient evidence to prove that PMC Philippines committed acts constituting unlawful practice of law.

Therefore, in the absence of sufficient evidence to support IPAP's claims, the SEC-EIPD did not err in ruling that there was lack of probable cause to pursue further an investigation against PMC Philippines for engaging in the illegal practice of law.

WHEREFORE, premises considered, the instant Appeal is hereby **denied**. The Enforcement and Investor Protection Department's Resolution dated 11 December 2013 is **affirmed**.

So ordered.

Pasay City, Philippines, 1 December 2017.

TERESITA J. HERBOSA
Chairperson

ANTONIETA F. IBE *
Commissioner

EPHYRO LUIS B. AMATONG**
Commissioner

BLAS JAMES G. VITERBO
Commissioner

EMILIO B. AQUINO
Commissioner

***On Official Business**
****On Leave**