

The Applicability of Patent-Agent Privilege After “*In re Queen’s University at Kingston*”  
by Rachel Perry

**Applicability of Patent-Agent Privilege - *Workman Nydegger* from *Workman Nydegger***

Recently, the Federal Circuit in *In Re Queen’s University at Kingston* recognized an independent patent-agent privilege. The Federal Circuit granted mandamus review of a district court’s discovery order with the purpose of determining whether a patent-agent privilege should exist. In the court’s examination into the appropriateness of this new privilege, the court relied on Rule 501 of the Federal Rules of Evidence, which authorizes courts to define new privileges using common law interpretation. By interpreting common law in absence of legislative or regulatory guidance, particularly a Supreme Court case from 1963, *Sperry v. State of Florida ex rel. Florida Bar*, the Federal Circuit found that an independent patent-agent privilege should be recognized. Although the Federal Circuit limited the scope of the privilege to tasks related the preparation and prosecution of patent applications, the new privilege’s implications are sure to be widespread.