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## **Newsletter September 2025**

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### **In memoriam Atty. Lila Quirino (May 13, 1944 – July 3, 2025)\***

Former IPAP president **Aleli Angela G. Quirino** passed away on 3 July 2025 at the age of 81.

Lila, as she was known to friends and colleagues, joined ACCRALAW in 1985. In 1992, she assumed the leadership of Firm's Intellectual Property Department (IPD), a position she held with distinction for sixteen (16) years. Lila remained an integral part of the Firm, serving as Of Counsel until 2023, even after her retirement from ACCRALAW in 2009.

Lila earned her Bachelor of Laws degree from Ateneo de Manila University, where she graduated with honors. She also held Bachelor of Arts and Bachelor of Science in Education degrees from Assumption College, where she graduated magna cum laude.

She wrote several articles on intellectual property law, including the Philippine chapter of the book, "Intellectual Copyright Law: A Practice Global Guide", which was published by Global Law and Business of the United Kingdom. She also regularly served as a speaker and panelist at local and international seminars on intellectual property law.

She held leadership roles in numerous professional organizations, including the Intellectual Property Association of the Philippines (IPAP), Inter-Pacific Bar Association, the ASEAN Intellectual Property Association, and the Asian Patent Attorneys Association, among others.

Lila was known for her warmth, generosity, kindness, and unwavering strength in spirit. She was an active member of various civic and charitable organizations, where she regularly extended assistance beyond her legal expertise. She was both a mentor and a friend, whose presence inspired admiration and affection within (and even outside) the legal circle.

Her passing is a profound loss. Yet, her legacy lives on in the many lawyers she mentored, the clients she served with distinction, and colleagues whose lives she touched with her grace and quiet strength.

May her memory continue to inspire, and may she rest in eternal peace.

*\*Lifted from the ACCRA website*

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### **Patent infringement in 2025 Bar Exams**

*by: Atty. Dennis R. Gorecho\**

A patent infringement case involving "doctrine of equivalents" was the first question on Commercial and Taxation laws on 2025 bar examinations.

XYZ Corp. filed an administrative complaint for patent infringement against ABC Company.

XYZ Corp. was the patentee of Philippine Patent No. I-12345, which boasts of the innovative step of curing ham by exposing it to filtered smoke cooled in a cooling unit between 10° and 12°C while retaining ingredients exerting highly preservative and sterilizing effects.

ABC Company employs a similar method, the only difference being that it cools down its filtered smoke between 20° and 24°C instead of 10° and 12°C.

ABC Company maintained that it is not guilty of infringing Patent No. I-12345 because its process is not exactly the same as XYZ Corp.'s.

XYZ Corp. countered, however, that infringement was committed because ABC Company's process performs substantially the same function and achieves substantially the same result as its own.

The bar exam question was lifted from the case of Philips Seafood Phil. Corp. Vs. Tuna Processors, Inc. (TPI) (G.R. No. 214148. February 6, 2023) that involved a patent of "smoking" as a traditional process of treating fish.

The Supreme Court stressed that exercise of the intellectual property rights of patent holders is limited to the claims of their patent under the Doctrine of Equivalents.

In resolving the case, the Supreme Court utilized the doctrine of equivalents test or whether the elements in the allegedly-infringing product or process are equivalent to the elements expressed in the patent's claims.

There is patent infringement if the allegedly-infringing product or process appropriates the innovative concept of the patent, and despite the modifications introduced in the infringing product or process, it still performs substantially the same functions, in the same way.

The Court dismissed TPI's case on the ground that the simultaneous cooling of the smoke and the meat is not equivalent to Patent I-31138's pre-cooling of the filtered smoke.

The Court pointed out that the last two elements of Patent I-31138 are not equivalent to the simultaneous cooling of the ambient temperature filtered smoke and tuna meat.

The Court noted that TPI failed to present evidence that the simultaneous cooling of the filtered smoke and tuna meat will cure tuna meat in substantially the same way as the pre-cooled filtered smoke. The eventual cooling of the filtered smoke in Phillips' process does not ipso facto indicate similarities in the effect of the smoke on tuna meat.

It noted that TPI's evidence is insufficient to establish that the eventual cooling of ambient temperature filtered smoke cools down to between 0° and 5°C before the chemical reaction takes place, and it retains the ingredients which exert the same highly preservative and sterilizing effects.

The Court explained that the changes introduced in the patented process or device have to be substantial to remove the allegedly-infringing process or device from the scope of patent protection.

The Court also added that there is no evidence proving that the ambient temperature filtered smoke cures the tuna meat in the same way as when the tuna meat is exposed to a filtered smoke already cooled to between 0° and 5°C.

The Bar Examinations were held September 7, 10, and 14 across 14 local testing centers nationwide, with the University of Santo Tomas (UST) serving as the national headquarters.

There were 13,193 examinees admitted this year to take the bar.

Female examinees outnumbered males this year, with 6,673 women compared to 4,764 men.

There were 5,215 first-time takers, 4,239 repeat takers, and 1,984 refresher examinees.

There were 206 senior citizens, 241 persons with disabilities, 41 pregnant women, and 139 examinees with medical conditions.

The subjects on the first day (September 7) were Political and Public International Law (15%) and Commercial and Taxation (20%). On the second day (September 10), the subjects were Civil (20%) and Labor Law and Social Legislations (10%), while on the third day (September 14) the subjects were Criminal (10%) and Remedial, Legal and Judicial Ethics with Practical Exercises (25%).

With a passing rate of 37.84 percent, a total of 3,962 passed the 2024 Bar exams after the justices decided to lower the passing score from 75 to 74 percent. This was higher than 2023's tally of 3,812.

*\*Sapalo Velez Bundang & Bullan Law Offices*

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## **Konektadong Pinoy Act, which removes the franchise requirement for data transmission industry participants, lapses into law**

*by: Atty. Bienvenido Marquez III, Atty. Frederick August Jos, Atty. Felicisimo Agas III\**

The Konektadong Pinoy Act (KPA), which was sent to the president for approval on 24 July 2024, lapsed into law on 23 August 2025. The law, among others, effectively removes the tedious and archaic congressional franchise requirement for data transmission industry participants (DTIPs), which include public telecommunications entities (PTE), value-added services (VAS) providers, and Satellite Systems Providers or Operators (SSPOs), to the extent that they are engaged in data transmission. Instead, the law prescribes a straightforward administrative registration requirement for DTIPs.

Coupled with the amendments to the Public Service Act previously introduced by RA 11659 (which removed the 40% foreign ownership investment cap on the telecommunications sector), the passage of the KPA has effectively resulted in the removal of all significant legal barriers to foreign players' entry into the Philippine data transmission sector.

Companies, particularly foreign-owned companies, that are seeking to enter the data transmission sector in the Philippines are advised to closely monitor the drafting and promulgation of the Implementing Rules and Regulations (IRR) of the KPA and to initiate steps to be in a position to register as DTIPs once the IRR is promulgated.

The KPA also empowers the Department of Information and Communications Technology (DICT) to formulate policies to safeguard local data. Insofar as this may impact cross-border data transfers, it is also strongly recommended for DTIPs to closely monitor the DICT's potential actions as regards localization of data.

This landmark legislation, which lapsed into law on 23 August 2025, establishes a comprehensive and inclusive data transmission and connectivity framework that would narrow the digital divide and foster a competitive, open-access environment in the telecommunications sector. It will modernize the country's digital infrastructure by encouraging investment, promoting infrastructure sharing and ensuring fair competition.

In pursuit of the foregoing, the KPA, among other measures, introduces the following legal reforms:

The KPA institutes a straightforward administrative registration requirement for DTIPs.

It repeals the congressional franchise requirement for DTIPs. This means that DTIPs, which may include PTEs, VAS providers and SSPOs, no longer have to obtain congressional approval to put up and operate radio stations and telecommunications networks to be used solely for data transmission.

The law allows DTIPs to deploy satellite technology and use associated spectrum in any or all segments of their broadband network without the need for a lease or rent capacity from enfranchised PTEs.

It mandates the formulation by the DICT, in coordination with the National Telecommunications Commission and the Philippine Competition Commission, of the Spectrum Management Policy Framework (SMPF) to prescribe the national policies and guiding principles to govern spectrum management, including, among others, spectrum valuation and pricing, spectrum allocation, and spectrum assignment for public, private and government use.

Notably, the KPA also gives the DICT the authority to formulate policies to safeguard local data, when necessary to advance national security and public interest, with primacy given to cross-border data flows as a key enabler of the global economy.

The DICT is now taking the lead in drafting the IRR of the KPA, which it is mandated to promulgate within 90 days. The KPA's implementation is expected to be in full swing once the IRR of the law is promulgated.

*\*Quisumbing Torres*

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## IPOPHL Incentive Program for Local Green Technologies

*by: Atty. Ma. Sophia Editha C. Cruz-Abrenica\**

The IPOPHL has issued Memorandum Circular 2024-037 (“MC 2024-037”) on the Green Technology Incentive Program for Patents, Utility Models and Industrial Designs, which aims to promote green technology through intellectual property incentives for local applicants to develop green and sustainable technologies. [Whereas Clauses and Section 1 of MC 2024-037] The incentives may be availed until 01 November 2025 or until 30 inventions, and 60 utility models and 60 industrial designs have qualified. [Section 2 of MC 2024-037]

Applications covered under the incentives program should fall under any of the following technologies: Alternative Energy Production; Solar Energy; Sustainable Transportation; Energy Conservation; Waste Management; Sustainable Agriculture/Forestry; Administrative, Regulatory or Design Aspects; and Nuclear Power Generation. [Section 1 of MC 2024-037] To be eligible, the invention, utility model or industrial design should pertain to green and sustainable technologies, the claims of which are directed to “a single invention, utility model or industrial design that materially enhances the quality of the environment, or that materially contributes to (1) The discovery or development of renewable energy resources, (2) the more efficient utilization and conservation of energy resources; or (3) greenhouse gas emission reduction”. [Section 4 of MC 2024-037] Further, the invention, utility model or industrial design must fall under the IPC or Locarno Classification provided under Annex A of MC 2024-037.

Under the incentive program, the following fees may be waived for qualified applicants within the above-indicated numbers of applications:

- i- For Inventions - the Early Publication Fees, or the Request for Substantive Examination Fee;
- ii- For Utility Models and Industrial Designs – the Second Publication Fee.

Other applicable fees are to be shouldered by the applicant. [Section 3 of MC 2024-037]

The Project Mechanics and General Conditions may be found in Sections 5 and 6 of MC 2024-037. Monitoring of the project is under the IPOPHL Bureau of Patents Registration Management Unit (RMU). [Section 7 of MC 2024-037]

*\*Junior Partner Villaraza & Angangco (V&A Law)*

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## The three dots iconic tattoo of Apo Whang-Od

*by: Atty. Dennis R. Gorecho\**

Buscalan Tinglayan, Kalinga - I was inked last Holy Week in my right forearm with the iconic three dots tattoo by Apo Whang-Od, the so-called last and oldest surviving mambabatok.

Batok refers to the traditional Filipino tattooing practice, particularly in the northern Luzon region, that has been around for more than a thousand years.

It involves hand-tapped designs applied to the skin using thorns or other sharp objects attached to a stick, often made from bamboo.

The elaborate designs once adorned both men and women and have deep cultural and spiritual significance, often representing tribal identity and kinship, as well as bravery, beauty, and social or wealth status.

The designs were commonly repeating geometric designs (lines, zigzags, chevrons, checkered patterns, repeating shapes); stylized representations of animals (like snakes, lizards, eagles, dogs, deer, frogs, or giant centipedes), plants (like grass, ferns, or flowers), or humans; lightning, mountains, water, stars, or the sun. Each motif had a name, and usually a story or significance behind it.

Whang-od Oggay also known as Maria Oggay is part of the Butbut tribe based in Buscalan. The other Butbut tribe vilages include Bugnay, Locong, Butbut proper, and Ngibut.

According to the Joshua Project, while many are now Christians, some older Kalinga generations still adhere to traditional practices like animal sacrifice to appease the spirits for sick children or adults and other misfortune. Tattoos for them reflected life and identity.

For over nine decades, Whang-Od had been hand-tapping tattoos as she has inked tribal warriors with elaborate geometric patterns and tribal women with symbols of fertility.

She began her apprenticeship at the age of 13, mastered the practice at 25, and is still tattooing with her age believed to be more than a century.

Whang-od's signature tattoo is the three dots, similar to an ellipsis which symbolize her and her two apprentices, her niece Grace Palicas, and her grandniece Elyang Wigan. This represents the continuation of "batok," from one generation to the next. The three dots are similar to an artist' signature, signifying "made in Kalinga".

She has become a living symbol of Kalinga culture, widely recognized for a revival of traditional hand-tapped tattoo culture in contemporary society.

The tattooing instrument is a needle fashioned from a pomelo and attached to the top of a handcrafted bamboo stick.

The tattoo ink is composed of indigenous materials, usually a mixture of charcoal and water.

I visited Buscalan last Holy week along with my classmates from the University of the Philippines College of Law, Annee Del Rosario and Cornelio Ventura,

The National Commission for Culture and the Arts (NCCA) conferred on Whang-od the prestigious Dangal ng Haraya Award in 2018.

Tattoos as protected copyright was the topic in the Emerging IP Rights Committee of the 76th Council Meeting of the Asian Patent Attorneys Association (APAA) at the Conrad Hotel in Pasay City, Metro Manila from November 18 to 21, 2024.

A tattoo is "an indelible mark or figure fixed upon the body by insertion of pigment under the skin or by the production of scars."

Copyright protection applies to "original works of authorship," both published and unpublished; this includes writing, art, music, dramatic works and other intellectual property.

Copyright arises automatically when a "work" that qualifies for protection is created and "fixed"— that is, taken out of the mind of the creator and turned into a tangible, material form.

The discussion revolved around issues of possible statutory or common law defenses or exemptions, application of tests of substantial similarity in various jurisdictions, and proper assessment of damages.

Many noted the lack of legal precedents specifically addressing tattoos within copyright laws.

The application of the fair use concept, in order to avoid liability for copyright infringement, depends on varying circumstances that are subjectively determined based on the reproduction of the copyrighted work on a person's body as a tattoo.

Some participants argued that a person's body is a form of inviolable self-expression and art, which should exempt it from copyright infringement.

The absence of a protection mechanism to enjoin copyright-infringing artwork in the form of tattoos presents a challenge, largely due to the lack of legislation specifically addressing tattoos as copyrighted works.

Unless a tattoo is considered an original expression or independent creation of the tattoo artist, or if the tattoo qualifies under the circumstances covered by the doctrine of fair use, it is no different from other forms of intellectual creation, which may warrant different treatment.

The work must be tangible: Ideas, speeches, or other works that have not been written down or recorded are not subject to copyright protection.

The work must be original, meaning it needs to be a product of an author's judgement and skill, and must not be copied — it is the author's own "intellectual creation."

Tattoos are emerging into greater significance and presence due to shifting societal attitudes toward tattoos as a form of self-expression and art, which has fueled acceptance and the demand for diverse tattoo styles and designs

Whang-od has been hailed as an iconic reminder of a Philippines formerly known as The Island of the Painted Ones, a history deeply rooted in ink.

Most countries adopt the principle of fair use, which allows the exploitation of a copyrighted work depending on its intended use.

*\*Sapalo Velez Bundang & Bulilan Law Offices*

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## **NPC issues Guidelines on Privacy Engineering in Systems Life Cycle**

*by: Atty. Divina Ilas-Panganiban, Atty. Angelo Tiglao, Atty. Cara Patrice Rosete\**

The National Privacy Commission (NPC) recently issued Advisory No. 2025-02, entitled "Guidelines on Privacy Engineering in Systems Life Cycle Processes" ("Advisory"), which provides a practical framework for personal information controllers (PICs) and personal information processors (PIPs) to embed privacy engineering across every stage of the system life cycle. This includes planning and requirements gathering, design and development, testing and evaluation, deployment and integration, and operation and maintenance, regardless of whether a system is newly developed, currently operational or undergoing updates.

The Advisory is anchored on the requirements of the Data Privacy Act (DPA), its implementing rules and regulations (IRR), and relevant NPC issuances. It emphasizes the legal obligation of PICs and PIPs to implement reasonable and appropriate security measures to safeguard personal data.

The Advisory provides a cohesive blueprint for integrating privacy requirements from system conception to retirement. It generally applies to all PICs and PIPs and covers five stages: (i) planning and requirements gathering, (ii) design and development, (iii) testing and evaluation, (iv) deployment and integration, and (v) operation and maintenance. The objective is to ensure that data subject rights are enabled by design and that safeguards are demonstrably effective on an ongoing basis, not only at launch.

**Planning and requirements gathering.** PICs and PIPs should determine the lawful basis for each processing activity, ensure that the purpose, scope and methods are compatible with declared and specified purposes, and apply the principles of transparency, legitimate purpose and proportionality when collecting personal data. A PIA should be conducted to identify and evaluate potential risks and effects on data subjects and to inform mitigation measures.

**Design and development.** PICs and PIPs must implement data minimization, adopt privacy-enhancing technologies (e.g., anonymization and pseudonymization, where appropriate), enforce encryption and access controls, and ensure disaster recovery readiness. Organizations should also build rights-enablement mechanisms into the product experience (e.g., access, portability, correction, deletion, opt-in/opt-out) and maintain traceability for access and changes. Threat modeling, static/dynamic analysis, and fuzz testing should be embedded in the life cycle so that weaknesses are addressed before release, and retention and secure disposal should be defined upfront.

**Testing and evaluation.** Before deployment, PICs and PIPs should validate the effectiveness of privacy and security controls and the usability of privacy features. This includes conducting code reviews and vulnerability scans and performing a privacy-architecture review to align technical choices with the DPA, the IRR and relevant NPC issuances.

**Deployment and integration.** PICs must provide clear and concise privacy notices, obtain valid consent where consent is the lawful basis, and avoid deceptive design patterns. Defaults should be protective: security settings of a system should be enabled by default; online forms should only require essential information by default and leave optional fields unrequired; opt-in consent mechanisms should have unchecked consent boxes by default; default user profiles should be private rather than public; location tracking should be disabled by default; and payment details should not be saved by default.

**Operations and maintenance.** In production, PICs and PIPs should regularly monitor for incidents and breaches with documented response and notification procedures, and conduct periodic audits and PIAs — at least annually — as well as fresh PIAs for major updates, new vendors, or changes in the nature, scope or purpose of processing. Organizations should remediate vulnerabilities promptly, honor data subject rights, and train personnel regularly on secure processing and incident management.

The foregoing requirements as provided by the Advisory are anchored in the long-standing legal obligation of PICs and PIPs to implement reasonable and appropriate organizational, physical and technical measures under the DPA and its IRR. Hence, noncompliance with the Advisory may result in administrative action by the NPC, including compliance or enforcement orders, administrative fines of up to PHP 5 million (approximately USD 90,900) per violation, and cease-and-desist orders or temporary/permanent bans on personal data processing. Affected data subjects may also pursue civil indemnity for violations of their data privacy rights. Finally, where an act or omission constitutes a criminal offense under the DPA, such as unauthorized processing of personal data, criminal penalties may be imposed on responsible officers who participated in, or through gross negligence allowed, the commission of the offense.

\* *Quisumbing Torres*

***Disclaimer: The views and opinions expressed in the articles are those of the authors and do not necessarily reflect the official policy or position of IPAP.***

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