

AIPPI – ALERT!

Client privilege in communications with their IP advisers

Ron Myrick, President of AIPPI, and Michael Dowling, Chairman of AIPPI's Q199 (Privilege Task Force) alert you to AIPPI's activities in relation to the privilege/confidentiality (*privilege*) of client communications with their IP advisers.

The problems

- Loss or lack of privilege in such communications occur both locally and globally.
- Locally, clients lose or lack privilege through insufficient local laws. This includes the issue whether loss of privilege by corporate counsel by reason of their employment by the companies for which they act, is fair and reasonable.
- Globally, there are similar effects adverse to privilege through one country not recognising privilege which exists in another.

Why are issues of privilege so important in IP advice?

- Clients frequently own IP multi-nationally, so they have to get advice from one country to another.
- Clients need to rationalise the advice they get by comparing the circumstances and advice that they get from one place to another.
- Clients frequently employ their own counsel in relation to IP matters (and others).
- The purposes of privilege are the profoundly desirable ones – i.e. of enabling frank communications between clients and their advisers to achieve best advice and compliance with the law. These objectives are being frustrated by failings in the availability and application of the law of privilege.

What is AIPPI pursuing on privilege?

As of now, there are two topics. **First**, a treaty proposal for adopting minimum standards recognising and applying privilege from one country to another in relation to communications between clients and their IP advisers – a treaty on Client Privilege in IP Professional Advice or 'CPIPPA' for short. **Secondly**, AIPPI will investigate loss of privilege in client relationships with the employee IP advisers (in-house counsel) being persons who are in fact qualified to give the advice where it is given.

How is AIPPI proceeding on these two topics?

- On the treaty proposal, there will be a WIPO/AIPPI Conference on privilege and harmonisation of laws by adopting a minimum standard treaty recognising privilege in communication by clients with their IP advisers around the world. This Conference is proposed by WIPO to be held in Geneva on Thursday 22 and Friday 23 May 2008. The Conference will provide data to Member States and NGOs participating including FICPI and ICC on the issues involved in obtaining such a treaty.
- AIPPI is urgently setting up a Special Committee of its members to investigate the status of privilege in the client relationship of employed IP advisers in their particular companies.

More information on these developments?

AIPPI will periodically publish downloadable data on the privilege topics which it is pursuing and the changes in the law which AIPPI will propose.

Link to WIPO Agenda:

http://www.wipo.int/meetings/en/details.jsp?meeting_id=15183

Link to AIPPI Agenda:

<http://www.aippi.org/calendar.htm>