



## Report Q199

### Client Privilege in IP Professional Advice – CIPPA

by Steven B. Garland, Chairman

#### Names and Functions of Committee Members

Chairman	Steven Garland	(Canada)
Co-Chairmen	Michael Dowling Wouter Pors Luiz H.O. do Amaral James Tumbridge	(Australia) (Netherlands) (Brazil) (United Kingdom)
Secretary	Andri Hess	(Switzerland)
Members	Argentina - Jorge Otamendi, Australia – Michael Dowling, Austria – Helmut Sonn, Belarus – Olga Kouznetsova, Belgium – Florent Gevers, Brazil – Luiz Henrique O. do Amaral, Bulgaria – Valentina Nesheva, Canada – Steven Garland/John Bochnovic, Chile – Cristóbal Porzio, China – Richard Li Yi, Columbia – Jan Carlos Suarez, Croatia – Zeljko Topic, Czechoslovakia – Michal Havlik, Denmark – Ejvind Christiansen, Ecuador – Francisco Perez, Egypt – Ahmed Abou Ali, Estonia – Urmas Kauler, Finland – Marja-Leena Mansala, France – Jacques Bauvir, Georgia, Shalva Gvaramadze, Germany – Detlef von Ahsen, Greece - Helen Papaconstantinou, Hungary, Jozef K. Talas, Iceland – Gunnar Örn Hardarson, India – Pravin Anand, Indonesia – Cita Citraninda Noerhadi, Ireland – Shane Smyth, Israel – Tal Band, Italy – Olga Capasso, Japan - Yuzuku Okabe/Shoichi Okuyama, Korea – Seong-Ki Kim, Latvia – Gatis Merzvinskis, Lithuania – Marius J. Jason, Malaysia – Chew Phye Keat, Mexico – Martin Michaus, The Netherlands – Wouter Pors, New Zealand – Tim Jackson, Nigeria – Justin Chuma Anosike, Norway – Amund Brede Svendsen, Pakistan – Yawar Irfan Khan, Philippines – Rogelio Nicandro, Poland – Marek Lazewski, Portugal – João Pereira da Cruz, Romania – Raluca Vasilescu, Russia – Aleksey V. Zalesov, Montenegro – Dr. Popovic, Singapore – Morris John, South Africa – Russell Bagnall, Spain – Luis de Larramendi, Sweden – Margareta Linderöth, Switzerland – Andri Hess, Thailand – Chavalit Uttasart, Turkey – M.N. Aydin Deris, Ukraine – Antonina Pakharenko-Anderson, United Kingdom – David Musker/James Tumbridge, USA – David Hill, Venezuela – Maria Milagros Nebreda	

Responsible Reporter

Thierry Calame

(Switzerland)

## **Summary of Activities of the Committee**

The Committee's ongoing activities this year in support of the issue of client privilege in IP professional advice include the following:

- (i) Contribution on issue of "Attorney Client Privilege" to the AIPPI's "Submission regarding the Consultation on the Commission Report on the Enforcement of Intellectual Property Rights – Directive 2004/48/EC" to the European Commission dated April 8, 2011;
- (ii) First submission to WIPO SCP 16 on issue of "Confidentiality of Communications Between Clients and Their Patent Advisors" dated February 28, 2011;
- (iii) Second submission to WIPO SCP 16 on issue of "Confidentiality of Communications Between Clients and Their Patent Advisors" dated May 4, 2011;
- (iv) Michael Dowling's attendance, and the making of two substantial oral presentations on behalf of the Committee and AIPPI, at the 16<sup>th</sup> Session of the WIPO SCP in Geneva on May 16 – 20, 2011;
- (v) Submission to WIPO SCP on issue of "Confidentiality of Communications Between Clients and Their Patent Advisors" in response to WIPO Circular 7999 dated June 28, 2011. A copy of the WIPO circular is attached. A draft of the Submission is being finalized for submission to WIPO and a copy of the same will be forwarded to the Bureau shortly;
- (vi) Further work and/or submissions to WIPO that may be required in advance of the 17<sup>th</sup> Session of the WIPO SCP in Geneva, on December 5-9, 2011. Member States and IP NGOs (including AIPPI through Q199) have responded to the WIPO Circular 7999 or are in the course of doing that. Q199 will consider the responses and make a further Submission to WIPO during October based on its consideration of those responses. Broadly speaking, the issue to be addressed by that Submission is how should the SCP at its upcoming meeting react to the information obtained; and
- (vii) Michael Dowling's attendance on behalf of the Committee and AIPPI at the 17<sup>th</sup> Session of the WIPO SCP in Geneva on December 5-9, 2011 to support the potential continuation of the study by the SCP of "Confidentiality of Communications Between Clients and Their Patent Advisors".

## **Deadline for any action**

There are presently no set deadlines for any action. However, as noted above, a further Submission to WIPO will be made shortly. Further, the support of AIPPI in general and by the Bureau in particular (including by the attendance of representatives of the Bureau throughout SCP 16), is much appreciated by Q199. We recommend similar involvement by the Bureau at SCP 17 not only in relation to the study by the SCP of CAP but for the wider interests of AIPPI in the work of the SCP.

### **Action recommended**

It is the Committee's view that it should continue to support and encourage the SCP to study the domestic and international issues pertaining to the protection of confidential communications between clients and their IP advisors. This includes the potential remedies that might be adopted to protect, in particular, the loss of privilege based on cross-border issues and the lack of an internationally harmonized approach to the protection of the confidentiality of such communications.

As noted above, the Committee will be making a further (written) Submission to WIPO for SCP 17, next month.

However, it is recognized that the SCP process is likely not going to produce a recommendation as to the solution of these problems. Nevertheless, it is believed to be in the AIPPI's interest to continue the process with the SCP until it ceases to yield information useful to establishing a common base for an international remedy.

Overall, it is believed that any such remedies to the existing problems will likely only come about via bilateral, multilateral and plurilateral agreements. However, it is also anticipated that WIPO Member States will likely not be persuaded to move on such agreements until the SCP process is over.

September 5, 2011