Cross-border Aspects of Client/Attorney Privilege
Group B+ Draft Proposal for a Multilateral Agreement

Group B+ Plenary Session
October 1, 2019
AIPPI

• AIPPI – politically neutral, non-profit organization, with over 9000 members from more than 100 countries
• Ca. 70 national/regional groups
• Dedicated to the harmonization and development of legal regimes for the protection of IP

➢ AIPPI is almost unique in the way that it can present an international viewpoint
CAP – Propositions

• Sound legal advice and advocacy serves public interest
• Sound legal advice and advocacy depend upon advisors being fully and frankly informed by their clients, and vice versa
• Full and frank communication depends upon communication being confidential and protected from forced disclosure
• This is true in domestic, but equally in cross border situations
• IP advice is provided by both attorneys-at-law and qualified non-lawyer advisors
• IP advice often travels through more than one advisor
CAP – Status quo

• Lack of protection domestically in some counties
• Protection may be restricted to communication involving an attorney-at-law
• Protection may not be recognized cross-border
• Progress has been made in certain countries during last decade, but only selectively and not in a harmonized way
• Problems persist
CAP – AIPPI's Work

• 2003: First AIPPI resolution

Resolves:

That AIPPI supports the provision throughout all of the national jurisdictions of rules of professional practice and/or laws which recognize that the protections and obligations of the attorney-client privilege should apply with the same force and effect to confidential communications between patent and trademark attorneys, whether or not qualified as attorneys at law (as well as agents admitted or licensed to practice before their local or regional patent and trademark offices), and their clients, regardless of whether the substance of the communication may involve legal or technical subject matter.
CAP – AIPPI's Work

- 2005: AIPPI Submission to WIPO for a treaty to be established on Intellectual Property Adviser Privilege


- 2013: FICPI/AIPPI/AIPLA Colloquium, Paris, with government delegations from Group B+ countries giving presentations
Core Group B+ Draft Proposal for a MLA

• 2019: AIPPI is excited, welcomes and appreciates the Draft Proposal for a MLA on Cross-border aspects of client/attorney privilege

• Group B+ today holds an instrument in its hands that would solve the most urging problems: recognition of protection, cross-border recognition of protection, common minimum standards
Core Group B+ Draft Proposal for a MLA

- September 2019: AIPPI World Congress, London
  - Resolution in support of Draft Proposal for a MLA
  - Debated and unanimously adopted in plenary with delegates from all member countries
AIPPI resolves that:

1) AIPPI supports and welcomes the adoption of the B+ Draft Agreement.

2) AIPPI would also welcome the extension of the B+ Agreement to cover other types of IP, and specifically those types of IP in respect of which there exist professional advisers qualified to advise on, for example, trade marks and designs.

3) In AIPPI’s view, the specific requirements set by any nation under Article 6, which an intellectual property advisor must meet, should:

a) be made available by that nation in a public register, so that it is possible to easily verify whether a specific communication with an adviser in that nation is a communication to or from a qualifying individual;

b) not include any limitations which would have the effect of denying protection simply because the adviser is not domiciled in or a national of that nation.
Thank you!

Jonathan Osha, Reporter General of AIPPI
Andri Hess, Chair AIPPI Standing Committee on Client Attorney Privilege