



FÉDÉRATION INTERNATIONALE DES CONSEILS  
EN PROPRIÉTÉ INTELLECTUELLE

INTERNATIONAL FEDERATION OF  
INTELLECTUAL PROPERTY ATTORNEYS

INTERNATIONALE FÖDERATION  
VON PATENTANWÄLTEN

## Standing Committee on the Law of Patents, Twenty-Ninth Session, Geneva, December 3 to 6, 2018

### Agenda point 8: Confidentiality of communications between clients and their patent advisors

19 December 2018

Founded over 100 years ago, **FICPI** is the international representative association for IP attorneys in private practice throughout the world, with about 5,500 members in 80 countries and regions, including Europe, China, Japan, South Korea and USA.

FICPI aims to enhance international cooperation amongst IP attorneys and promote the training and continuing education of its members and others interested in IP.

FICPI strives to offer well balanced opinions on proposed international, regional and national legislation based on its members' experience with a great diversity of clients having a wide range of different levels of knowledge, experience and business needs of the IP system.

**FICPI** is pleased to have an opportunity to state the following:

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**FICPI** recognizes the importance of the protection of IP advice to allow a client to have frank, full, honest and uninhibited communications with their qualified or otherwise suitably accredited Intellectual Property Advisors and to opinions and advice therefrom. FICPI further understands that confidential communications between a client and their Intellectual Property Advisor may be subject to discovery in some jurisdictions, whether the Advisor acts inside or outside the jurisdiction and even where such communications by Intellectual Property Advisor acting within the jurisdiction are afforded protection from disclosure.

Intellectual property rights (IPRs) need to be enforceable in each jurisdiction where they exist.

Persons need to be able to obtain comprehensive, frank advice in confidence on the acquisition and enforcement of IPRs, based on full knowledge of the relevant facts, from IP advisors nationally and transnationally, and therefore communications to and from such advisors and documents created for the purposes of such advice need to be confidential to the persons so advised and protected from forcible disclosure to third parties (protection/privileged) unless and until the persons so advised voluntarily disclose such communications.

Consequently, member states are urged to support a requirement for confidentiality for such communications and to extend the protection/privilege which applies nationally to IP advice given by qualified or otherwise suitably accredited IP advisors in other countries and regions, to avoid causing or allowing confidential advice on IPRs given by IP advisors to be disclosed and thus, the confidentiality in that advice to be lost everywhere.



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The adverse consequences of such loss of the protection include owners of IPRs deciding not to trade in particular nations or not to enforce IPRs in such nations if the consequences of doing so may be that their communications relating to the obtaining of IP advice are disclosed and used against them both locally and internationally.

FICPI strongly supports keeping this topic on the agenda of this Committee and also kindly suggests the Committee to engage in a further sharing session and to compile a reference document on this topic.

### IMPORTANT NOTE:

The views set forth in this paper have been provisionally approved by the Bureau of FICPI and are subject to final approval by the Executive Committee (ExCo). The content of the paper may therefore change following review by the ExCo.

The International Federation of Intellectual Property Attorneys (FICPI) is the global representative body for intellectual property attorneys in private practice. FICPI's opinions are based on its members' experiences with a great diversity of clients having a wide range of different levels of knowledge, experience and business needs of the IP system.

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The Australian Federation of Intellectual Property Attorneys, FICPI Canada, Association of Danish Intellectual Property Attorneys (ADIPA), Suomen Patenttiasiamiesyhdistys ry, Association de Conseils en Propriété Industrielle (ACPI), Patentanwaltskammer, Collegio Italiano dei Consulenti in Proprietà Industriale, Japanese Association of FICPI, Norske Patentingeniørers Forening (NPF), Associação Portuguesa dos Consultores em Propriedade Industria I (ACPI), F.I.C.P.I South Africa, the International Federation of Intellectual Property Attorneys – Swedish Association, Verband Schweizerischer Patent und Markenanwälte (VSP) and the British Association of the International Federation of Intellectual Property Attorneys are members of FICPI.

FICPI has national sections in Argentina, Austria, Belgium, Brazil, Chile, China, Czech Republic, Greece, Hungary, India, Ireland, Israel, Malaysia, Mexico, Netherlands, New Zealand, Romania, Russia, Singapore, South Korea, Spain, Turkey and the United States of America, a regional Andean Section comprising our membership in Colombia, Ecuador, Peru, Venezuela and Bolivia, a provisional national section in Poland and individual members in a further 41 countries and regions.

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