

The Legal Situation of PCIPA in Germany

AIPLA - AIPPI - FICPI
Colloquium on PCIPA,
Paris 26-28 June 2013

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Overview

- Rights of *national* Attorneys and Patent Attorneys
- Obligations of *national* Attorneys and Patent Attorneys
- Reasons for the legal status quo
- Rights and Obligations of *foreign* Attorneys and Patent Attorneys
- Proposal for one possible Approach

Rights of *national* Attorneys and Patent Attorneys

- Right to refuse disclosure of any information received while executing profession
→ Application in both civil and criminal proceedings
(*Sec. 383 Code of Civil Procedure; Sec. 53 Code of Criminal Procedure*)
- Right to withhold documents possessed by (patent)attorneys containing communication between client and (patent)attorney
(*Sec. 97 Code of Criminal Procedure*)

Obligations of *national* Attorneys and Patent Attorneys

- Obligation to professional secrecy
(*Sec. 43a Code for Attorneys; Sec. 39a Code for Patent Attorneys; Sec. 2 Code of Professional Conduct for Attorneys; Sec. 2, 5 Code of Professional Conduct for Patent Attorneys*)
- Obligation to refuse disclosure of any information received while executing profession
 - Unless client permits disclosure
 - Application in both civil and criminal proceedings
 - Otherwise commission of a crime (breach of secrecy) and contempt of Code of Professional Conduct

Reasons for the Legal Status Quo /1

- (Patent)attorneys as independent part of the administration of justice

(Sec. 1 Code for Attorneys; Sec. 1 Code for Patent Attorneys)

→ Need for protected communication between advisee and advisor

Reasons for the Legal Status Quo /2

- Code of Professional Conduct
 - Mandatory membership for (patent)attorneys in a professional association (bar)
 - Professional association enacts Code of Professional Conduct obliging all members
 - Code of Professional Conduct imposes obligations such as professional secrecy
 - Based on professional self-conception

Rights and Obligations of *foreign* Attorneys and Patent Attorneys

- Right to refuse testimony in civil proceedings
- as far as obligation to keep confidentiality under the applicable jurisdiction of place of business
 - German Code of Civil Procedure recognises foreign obligation to secrecy

Proposal for one possible Approach

- Development of a common Code of Professional Conduct (CPC)
 - CPC as expression of common values of IP-professionals
 - Self-binding obligations due to common values
 - Self-binding obligations as reason for a minimum protection standard



THANK YOU FOR YOUR ATTENTION!

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