

The Protection of the Confidentiality in IP Advice Remedies and Goals for the Colloquium

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The Need for Protection has Become More and More Important

It has become more and more important to try to encourage the effective protection of the confidentiality of communications relating to IP advice in more and more countries

The Need for Protection has Become More and More Important (cont'd)

1. to give certainty of the protection of confidentiality in all relevant countries;
2. thereby encouraging frank and complete disclosures; and
3. thereby encouraging correct and complete IP advice.

The Continuing Expansion of the Global Marketplace

This has led to

more and more products:

1. being manufactured in more and more countries; and
2. being distributed to more and more countries.

The Continuing Expansion of the Global Marketplace

This has led to:

1. the need to secure IP Rights in more and more countries;
2. the need to enforce IP Rights in more and more countries; and
3. the need to pursue IP litigations serially, and sometimes simultaneously, in several key countries.

The Continuing Expansion of the Global Marketplace

- This has led to more and more clients in one country more frequently having the need to secure competent IP advice from IP advisors in other countries.
- They need to have absolute certainty in advance that the confidentiality of the communications will be protected.

Residents Can Be Seriously Disadvantaged

- Countries that are “unaware” of the serious problems need to be made to appreciate that their residents can be seriously disadvantaged if they are sued in a country which allows discovery.

Recognition of All Authorized IP Advisors

The remarkable advances in complex technologies have led to an increasing need for IP advisors to have highly specialized technical qualifications.

FICPI

FICPI is committed to ensuring the protection of the confidentiality of communications relating to IP advice in all countries –

and between clients in any country and IP advisors in any other country.

FICPI

- FICPI has national FICPI groups in over 40 countries.
- FICPI also has members from over 85 countries.

FICPI

FICPI has approved a resolution that the protection of the confidentiality of communications between clients and IP advisors relating to IP advice:

1. should be reinforced;
2. should be extended to as many countries as possible; and
3. should also be extended to relevant communications between clients in one country and IP advisors in other countries.

Main Goal of Colloquium

- The main goal of the Colloquium is to encourage and assist the governments of a group of key industrialized nations to develop a model framework.
- And then encouraging other countries to adopt the model framework – thereby securing the confidentiality of local and cross-border IP advice communications in all relevant countries.

Residents of Individual Nations Can Be Seriously Prejudiced

Individual nations need to be made to realize that if they do not provide effective and adequate protection for communications relating to IP advice in their own countries, then their residents will be at a serious disadvantage if they become involved in an IP litigation in a country that does recognize and enforce protection for communications relating to IP advice, and allows discovery.

Civil and Common Law Countries

The model framework of the agreement should apply equally to Civil Law countries and to Common Law countries.

In-House Counsel

The obligation of confidentiality needs to be extended to in-house counsel when they are giving IP advice – because exactly the same considerations apply to them – to give complete and proper advice after a full and frank confidential disclosure to them of all relevant information.

The Confidentiality Applies to the Communications – Not to the Facts

- It is important to make it very clear in the framework of the agreement that facts cannot be made confidential by disclosing them to an IP advisor.
- The confidentiality applies to what the client says to its IP advisor about the facts and to the advice given by the IP advisor to the client about those same facts.