
Colloquium

Protection of Confidentiality in IP Advice National and International Remedies

**June 26-28, 2013
Paris, France**

Communiqué from AIPLA, AIPPI & FICPI

The Colloquium was held to encourage consensus on a framework to protect confidential intellectual property advice given to a client by lawyer and non-lawyer IP advisors. In the complex area of international IP advice, there is a strong public interest to protect communications related to such advice so that correct and comprehensive legal advice can be sought and obtained without fear of disclosure.

The presenters at the Colloquium included government experts from Australia, Germany, Japan, Switzerland and the United States of America, and leading independent commentators including Judge Braden of the US Court of Federal Claims and John Cross, Professor of Law at the University of Louisville.

Two of the major problems identified were:

- some countries do not provide any, or sufficient, domestic protection to lawyer and/or non-lawyer IP advisor communications relating to IP advice; and
- several countries do not provide any, or sufficient, protection to foreign lawyer and/or non-lawyer IP advisor communications relating to IP advice.

The presentations and discussions between the participants demonstrated to the three host IP Associations that there are viable options to remedy these problems and that their resolution is of great importance. In both common and civil law systems an agreement could be made that communications relating to IP professional advice with lawyers and/or non-lawyer IP advisors shall be either confidential to the client or subject to professional secrecy and shall, in both cases, be protected from disclosure to third parties unless made public by or with the authority of the client. It was generally agreed that the protection should not extend to underlying facts subject to disclosure requirements such as prior art.

The three host IP Associations reported to the meeting that the comments and suggestions of the participants would be reviewed with the object of developing a proposal for further consideration by individual countries and jurisdictions.