

# Privilege & secrecy in France

Attorneys-at-law (*avocat*)

IP attorneys (*CPI*)

In-house practitioners (*juriste en entreprise*)



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# The IP professionals in France

	Attorneys at law	IP attorneys (CPI)	In-house practitioners
Bar registration	YES	YES/NO	NO
	Representation before the Courts	Representation before the French (and European) PTO ( <u>not</u> before the Courts). Give legal advice in the matter of IP rights  (article L422-1 and following French IP Code)	Provide legal advices + draft agreements  (Art. 58 law No 71-1130)



# Legal sources for privilege

Attorneys at law	IP attorneys	In-house practitioners
PROFESSIONAL SECRECY		PROFESSIONAL SECRECY
Art. 66-5 Law No. 71-1130 (31.12.1971) :	L 422-11 French IP Code (11.02.2004):	
<ul style="list-style-type: none"><li>- advices sent to client</li><li>- correspondence exchanged with his client, a colleague or an attorney,</li><li>- meeting notes</li><li>- all elements of the file</li></ul> are covered by professional secrecy		Rule 153 EPC is limited to the validity, scope of protection or infringement of an EP patent or EP patent application, assessment of the patentability and preparation or prosecution of the EP patent application.



Attorneys at law	IP attorneys	In-house practitioners
<p>ECJ <b>C-155/79</b> AM &amp; S Europe v Commission (18.05.1982): confidentiality of written communications between lawyers and clients should be protected at Community level. <u>protection subject to 2 cumulative conditions</u>: the exchange with the lawyer must</p> <ul style="list-style-type: none"> <li>- be made for the purposes and in the interests of the client's rights of defence and,</li> <li>- emanate from 'independent lawyers', i.e. lawyers not bound to the client by a relationship of employment.</li> </ul> <p>French <b>Supreme Court</b> 14.03.2000: art 66-5 applies to correspondence dated prior to entry into force of the law, the dispute regarding their confidential status being pending at that time</p>	<p>Paris 1<sup>st</sup> instance court (20.03.2005)</p> <p>(CEA v. Samsung (DDE 2007))</p>	<p>ECJ <b>C-550/07</b> 14/09/2010 Akzo Nobel Chemicals Ltd, Akcros Chemicals Ltd : <b>No secrecy</b></p> <p>(limited to enforcement proceedings by the European Commission, but it may encourage national competition authorities (and others) to align their procedures to the more restrictive EU standard on LPP as articulated by the Court)</p>



# What should be done?

- precautionary principle : avoid written in-house opinions as much as possible (emails, memo, notes), because it is discoverable. Difficult in real life.
- ideally : a law regarding in-house practitioners –but we are far from it at the present time since that would require merging the in-house practitioners with attorneys-at-law

