

MEMORANDUM

10 August 2011

/RJE

Ref.: 09/67

Confidentiality of Communications between Clients and their Patent Advisors

Referring to document C. 7999 as of June 28th 2011 the Danish Patent and Trademark Office being comprised by the Danish civil law system shall submit the following information in relation to the raised questions:

1. *National laws and rules dealing with cross-border aspects of confidentiality of communications between clients and patent advisors*

No laws and rules dealing with cross-border aspects of confidentiality of communication between clients and patent advisors (non-lawyers) exist in Denmark.

2. *Problems in relation to cross-border aspects of confidentiality of communications between clients and patent advisors*

Danish patent advisors (non-lawyers) can become forced to disclose confidential information in litigations in other countries, which among other things places Danish patent advisors with a competitive disadvantage compared to certain foreign patent advisors.

3. *Remedies that are available in countries and regions to solve the problems that remain at the national, bilateral, plurilateral and regional levels.*

In order to avoid being forced to disclose confidential information Danish patent advisors use different remedies as for example:

- Communication/counselling in writing to clients is sent via Danish lawyers.
- Oral communication/counselling is provided in stead of communication/counselling in writing. Such communication/counselling does however comprise disadvantages, e.g. misunderstandings can arise, information can be lost, the client does not obtain documentation for the counselling.

Especially because of the cross-border challenges in relation to confidentiality of communications, The Danish Patent and Trademark Office is about to set up a national committee to examine ways to change national regulation within the area in order to meet the cross-border challenges.

Since this is a cross-border problem The Danish Patent and Trademark Office would like to express its high support to plurilateral and regional solutions on this subject matter.