

Client-Attorney Privilege – Position Paper

epi's position with respect to ICC's proposal for a treaty on privilege for communications between IP-advisors and their clients

Background

On 22-23 May 2008 WIPO held in cooperation with AIPPI a conference on "Client-Attorney Privilege". At this conference ICC presented a proposal for a WIPO treaty setting minimum requirements to "Client-Attorney Privilege", with the aim of harmonising client-attorney privilege within member states of the treaty.

epi

epi (Institute of Authorized Representatives before the European Patent Office) represents over 9000 European Patent Attorneys, both from private practice as well as from industry, from the present 36 EPC Contracting States.

The rationale for an evidentiary privilege

Client-attorney privilege is a necessary counterbalance to discovery in litigation in common law jurisdictions. The public policy reason why privilege exists for communications between clients and legal advisors is that it is in the interests of justice, because a client must be able to discuss his matter openly and freely without risking that what he discloses to his advisor or the advisor's response may at a later stage be used against him. However, if the client and legal advisor fear that these communications might later be exposed in Court (i.e. if there is doubt about privilege) then they will tend to be inhibited, incomplete, implicit, and oral.

European Patent Attorneys

The EPC 2000 adopted on December 13, 2007, contains an article and a related rule [Art. 134a(1)(d) EPC and Rule 153 EPC] with the purpose of providing European Patent Attorneys with a client-attorney privilege "from disclosure in proceedings before the EPO in respect of communications between a professional representative and his client or any other person".

epi position

epi is of the opinion that it is beneficial if the law relating to "Client-Attorney Privilege" on an international level will be harmonised, and accordingly.

epi supports the idea of a treaty on "Client-Attorney Privilege" which should cover European Patent Attorneys both in private practice and in industry in relation to their clients or any other person.

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