



11 July 2023

## **AIPPI & FICPI: Joint Statement on Client-Patent Attorney Privilege**

To the Group B+ delegates:

AIPPI and FICPI support a multilateral agreement on client-patent attorney privilege with cross-border application.

We thank the Core Group for progressing this vital work over many years and urge the Group B+ to endorse it.

### **What is “client-patent attorney privilege”?**

The “privilege” is protection against forced disclosure of confidential communications between a client and their patent adviser.

### **Whose privilege is it?**

It is the privilege of the client: the holder of the patent right or the party wishing to challenge a patent.

It is not the privilege of the patent adviser.

### **Why does the client need this privilege?**

The effective administration of justice requires complete transparency between client and adviser. When clients can give full and frank instructions, their advisers can provide full and frank advice based on complete information.

Certainty of protection against forced disclosure of confidential communications permits clients to receive the best possible advice. This makes the litigation process more efficient: parties understand the risks involved in enforcing or defending their rights or engaging in potentially infringing activity; strategy can be streamlined; weak cases may be settled, or not commenced at all.

### **What is the harm done when there is a risk of forced disclosure of confidential communications between a client and their IP adviser?**

If a client cannot be confident that what they disclose to their adviser will not be revealed in litigation, the client may withhold full information from their adviser. Without all relevant information, the quality of the advice received is necessarily compromised.

Secondly, the adviser may refrain from giving full and frank advice, for example:

- advising a patentee that they may not be able to prove infringement;
- advising a patentee that they have a weak patent; or
- advising a third party that they do not have a defence to a patent infringement action.

Costly patent litigation based on insufficient advice is not a rational use of the court system. A client who cannot trust the quality of their advice may choose not to enforce their patent rights, or challenge a weak patent. This diminishes the value of the patent system.

### **Why is a multilateral agreement required?**

A multilateral agreement provides a strong signal of commitment. A soft law approach, such as a recommendation, provides insufficient certainty of a minimum consistent standard.

In today’s global economy, patents are generally registered in multiple jurisdictions. The laws relating to disclosure of confidential information passing between a client and their patent adviser vary considerably. Clients cannot be assured of uniform treatment of their information in cross-border



disputes. Ultimately, a multilateral agreement with cross-border application benefits clients wherever they are located and any company that does business internationally.

Sincerely

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Secretary General, FICPI

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### **Who we are**

AIPPI and FICPI represent thousands of stakeholders across all industry sectors in civil and common law jurisdictions.

AIPPI has 8000+ members from 130+ countries including global, regional and domestic companies, researchers, academics, judges, lawyers and attorneys.

FICPI's 5000+ members are patent attorneys working across 80 countries and regions, representing innovators from global corporates to individual inventors.