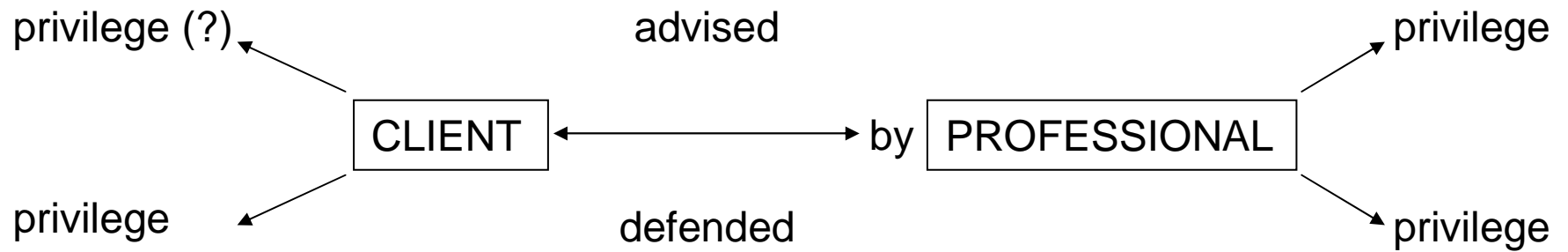


Professional Secrecy, Confidentiality and the Rights of the Defense in France

Thierry Mollet-Viéville



NB : the right to refuse to reply to a Judge
(... "discovery" ...)

IP PROFESSIONALS

- (1) independent, not salaried by client:
 - a)
 - Avocats (also before Judicial Authorities)
 - Conseils en Propriété Industrielle (CPI)
(only before IP Office).

 - b) no disclosure:
 - to anyone
even to a Judge,
 - even with the authorization of the client.
.professional secrecy.

- (2) European Patent Attorneys at EPO
(see Anette HEGNER).

FULL CLIENT PRIVILEGE = when defended !

- (1) a) by an Avocat
[by a CPI? not yet confirmed]

 - b) i. to get favorable decision
from an Authority:
 - Judicial:
 - civil
 - criminal
 - Administrative:
 - IP Office
 - ii. before, during, after the proceedings
-
- (2) by all of its employees:
 - lawyers or not
 - involved with the proceedings.

CLIENT PRIVILEGE = when advised ?

unclear response

Example:

- The client communicates a manufacturing formula to his Avocat / CPI to know whether or not it is infringing a patent right.
- Despite the legal opinion from his Avocat / CPI, the client decides to start with the infringing manufacturing.
- The Judge, in charge of the patent litigation, would have access (at the client's premises) to any document proving:
 - ⌘ – the features of the manufacturing (the formula)
 - the awareness of the client (the legal opinion)
 - ⌘ but no document prepared for the defense (see previous slide)

A loss of confidentiality?

- (1) by the Avocat / CPI, no disclosure permitted [in / outside France].

- (2) by the client:
 - free to disclose
 - free to pass on:
 - to additional Avocat / CPI in France
 - to foreign IP professionals:
NDA sufficient ?