

International Legal Framework

As regards the recognition of foreign evidentiary privilege in general, in 2004 the Governing Council of UNIDROIT adopted the Principles of Transnational Civil Procedure prepared by a joint American Law Institute/UNIDROIT Study Group. The Principles served as guidelines for national law projects and reforms, and consist of 31 provisions, which aim at reconciling differences among various national rules of civil procedure, taking into account the peculiarities of transnational disputes. Article 18 deals with evidentiary privileges and immunities, and states that “effect should be given to privileges, immunities, and similar protections of a party or non-party concerning disclosure of evidence or other information”. The comments to that Article note that privileges protect important interests, but they can impair the establishment of the facts. They highlight the differences of the conceptual and technical bases of the privileges from one system to another and the choice-of-law problems in applying such rules.

The preservation of confidentiality of communications between patent advisors and their clients is not expressly regulated by any international IP treaty. However, there are provisions within those treaties which may have some relevance to the issue at stake. The present chapter explores provisions within the Paris Convention and the TRIPS Agreement. In addition, the relevance of the General Agreement on Trade in Services (GATS) of the World Trade Organization (WTO) is addressed as well.