

France

Clarification of secrecy obligation in order to facilitate recognition in foreign courts

In France, the Intellectual Property Code R.422-54 (2°) was amended to expressly provide for a professional secrecy obligation of patent advisors. Article L422-11 (inserted by Act No. 2004-130 of 11 February 2004, Article 67, Official Journal of February 12 2004) states:

“In any matter and for all the services mentioned under Article L. 422-1, the industrial property attorney shall observe professional secrecy. Consultations addressed or intended for customers, professional correspondences exchanged with customers, fellow-members or attorneys-at-law, notes of meetings and, more generally, all documents of the file shall be subject to professional secrecy.”

The motivation for passing this legislation was to avoid the forcible disclosure in discovery proceedings of communications with industrial property attorneys in foreign courts, as in the case *Bristol-Myers Squibb Co. v. Rhone-Poulenc* in 1999 (French Senate, Ordinary Session 2002-2003, Document No : 176, Title 7 (Réforme du statut de certaines professions judiciaires ou juridiques, des experts judiciaires et des conseils en propriété industrielle, N° 176, SÉNAT, SESSION ORDINAIRE DE 2002-2003, Annexe au procès-verbal de la séance du 12 février 2003)).