

Discussion of the Relevant Issues

Other Issues

Another issue which is often raised by patent practitioners is whether communications between an in-house patent advisor and his/her client, i.e., an employer, should be given the same level of preservation of confidentiality of advice as in the case of independent patent practitioners. Some advocates that the same treatment should not be given, since in-house patent advisors are not sufficiently independent from their employer to form an unbiased opinion.¹ However, some others consider that communications with in-house patent advisors should be treated in the same manner as external patent advisors, since all practitioners are under the professional duty that exceeds loyalty to the employer.² In their view, the same protection is justified, since in-house patent advisors are the first to get in touch with patent conflicts and are indispensable for quick legal action, provide first aid to the employer, contribute to industry-specific interpretation of patent cases, are frequently coordinating multi-national conflicts, and make proposals for strategy to the client's management.³

¹ In *Akzo Nobel Chemicals Ltd and Akcros Chemicals Ltd v Commission* (Case C-550/07 P) [2010], the Court of Justice of the European Union confirmed that privilege does not apply to communications between a company and its in-house lawyers in the context of EU antitrust investigations.

² In *Alfred Crompton Amusement Machines*, Lord Denning said that salaried legal advisers are 'regarded by law as in every aspect in the same position as those who practice on their own account. The only difference is that they act for one client only, and not for several clients.

³ Hans Blöchle, Seminar on the Confidentiality of Advice from Patent Advisors, SCP/21, Nov. 5, 2014.