

Possible Remedies Identified on the Cross-Border Aspects

Practical Approaches

In the absence of an international legal framework that effectively recognizes confidentiality of IP advice at the global level, a number of practical remedies have been sought by practitioners in order to avoid forcible disclosure of confidential IP advice in their countries as well as in foreign countries. However, certain practical measures such as increased use of oral communications or co-signature of documents with a lawyer and a patent advisor, are not considered as being always efficient, and may increase the cost of providing IP advice.

Cooperation with lawyers

In some countries, non-lawyer patent advisors use the services of lawyers in provision of their services to clients. In particular, non-lawyer patent advisors provide their written communications/counseling to clients co-signed by lawyers. Such an approach may, however, complicate and raise the cost of IP legal advice.

Increased use of oral communications

Patent advisors often communicate orally instead of in writing, to avoid the disclosure of confidential information in litigation in other countries. This may complicate the counseling process and prevent the establishment of useful documentation.

Contractual confidentiality agreements

Patent attorneys who are not bound by confidentiality obligations in foreign jurisdictions could be bound by contractual confidentiality agreements. However, it is not clear whether such agreements would be effective against forcible disclosure in all different pre-trial discovery proceedings. In most jurisdictions, patent attorneys are already bound by domestic secrecy obligations.