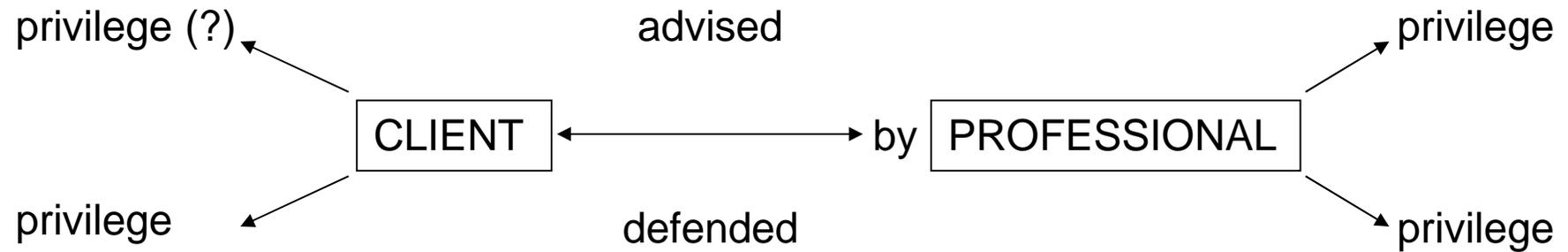


# **Professional Secrecy, Confidentiality and the Rights of the Defense in France**

**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 ?