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**Submitted via Email: [MDB-International@ipaaustralia.gov.au](mailto:MDB-International@ipaaustralia.gov.au)**

**Re: Draft Agreement on Cross-Border Aspects of Client–Patent Attorney Privilege (“Draft Agreement”)**

Dear Group B+ Core Group:

The Intellectual Property Owners Association (IPO) appreciates the opportunity to respond to the request for comments on the Draft Agreement on Cross-Border Aspects of Client-Patent Attorney Privilege (the “Draft Agreement”).

IPO is an international trade association representing a "big tent" of diverse companies, law firms, service providers, and individuals in all industries and fields of technology that own, or are interested in, intellectual property (IP) rights. IPO membership includes over 125 companies and spans over 30 countries. IPO advocates for effective and affordable IP ownership rights and offers a wide array of services, including supporting member interests relating to legislative and international issues. IPO's vision is the global acceleration of innovation, creativity, and investment necessary to improve lives.

IPO appreciates the considerable work undertaken by the Core Group and commends the collective effort to develop a framework aimed at improving certainty and uniformity in the protection of confidential communications in cross-border patent practice. Ensuring that clients and practitioners can exchange confidential information without risk of compelled disclosure is essential to the proper functioning of the global patent system.

**I. Specific Comments**

**1. Geographic Neutrality (Article 3)**

The Draft Agreement appropriately ensures that privilege applies regardless of where the advice is given or where the professional is physically located. This is essential in today's global IP landscape, where multinational corporate structures and international collaborations require seamless cross-border communications.

**2. Scope of Covered Practitioners**

IPO supports the Draft Agreement extending privilege to communications involving “patent advisors” formally certified and authorized to act before a competent authority. IPO recommends the Core Group explicitly include that “patent advisors” encompasses in-house practitioners and practitioners who are not qualified as attorneys at law.

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### **3. Limitation to Patent-Specific Legal Advice (Article 1(d))**

The Draft Agreement restricts privilege to “advice on patent law” within the advisor’s certified area of expertise. IPO recommends the core group include as privileged all communications provided by patent practitioners on patent-related matters within the scope of the practitioner’s authority to practice under the laws of the jurisdiction in which they are certified, whether or not the advice can be characterized strictly as “on patent law.” Narrowing the privilege to patent law issues risks inconsistent coverage and uncertainty.

### **4. “Dominant Purpose” Requirement (Article 2)**

The Draft Agreement requires that communications be made for the “dominant purpose” of seeking or providing professional advice. This standard is foreign to U.S. privilege doctrine, imposes a stricter threshold than attorney-client privilege, and risks excluding mixed-purpose communications that are common in in-house and strategic counseling contexts. IPO respectfully recommends replacing “dominant purpose” with the standard of communications made for the purpose of obtaining legal advice.

### **5. Condition That Advice Be Privileged in the Practitioner’s Own Country**

Notes accompanying the Draft Agreement indicate that a practitioner must be subject to privilege in their home jurisdiction to benefit from the Draft Agreement abroad. This requirement may penalize practitioners from jurisdictions that lack explicit statutory privilege protections. IPO recommends the Core Group revise the Draft Agreement to provide that privilege travels with the communication and does not depend on the existence of equivalent domestic legislation.

## **II. Conclusion**

IPO commends the Core Group for its significant and thoughtful efforts to establish a multilateral consensus on client-practitioner privilege. IPO respectfully submits that the Draft Agreement would be meaningfully strengthened by adopting the recommended revisions to better align with modern global practice.

IPO thanks the Core Group and the B+ Member States for the opportunity to comment and would welcome further dialogue or opportunities to participate in continued development of the client-attorney privilege framework.

Sincerely yours,



John Cheek  
President