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Profile

Jessica advises her clients in all aspects of business counsel and disputes, with a particular focus on data privacy, cybersecurity and intellectual property. Jessica is co-chair of the firm's cybersecurity and data privacy practice.

Jessica's broad experience includes advising clients on data privacy compliance, drafting incident response strategies, managing and/or overseeing cybersecurity breaches, and compliance with breach notification requirements. She also has experience handling the transactional aspects of intellectual property, including drafting and negotiating licenses, preparing and prosecuting trademark applications, preparing opinions, conducting due diligence investigations and negotiating technology vendor contracts with respect to data privacy compliance and IP protection.

Particular to her IP litigation experience, Jessica's practice includes protecting patents and trademarks in federal and appellate courts and before the International Trade Commission for clients in industries such as medical and mechanical devices, computer software and hardware, pharmaceuticals, telecommunications, and e-commerce technologies. Jessica's experience in appellate work includes argument before the Federal Circuit.

Jessica is a veteran commercial litigator with extensive trial and appellate advocacy experience, in both state and federal court. Prior to joining Bond, Jessica practiced in the New York City office of a prominent intellectual property law firm, Morgan & Finnegan, LLP, (acquired by Locke Lord), and she was a judicial intern for Judge Leonard D. Wexler in the U.S. District Court for the Eastern District of New York.

Jessica is a certified mediator and a member of the Federal Court Mediation Panel for the Western District of the United States District Court.

Representative Matters

- Breach of Contract & Trade Secret Misappropriation Litigation on behalf of Greek Yogurt producer
- Co-chaired Jury Trial in Complex Commercial Dispute in Erie County Supreme Court, Commercial Division
- Defense of Environmental Contamination Claims Against Oil & Gas Clients
- Defense of Financial Institutions From Patent Infringement Allegations

Education

- St. John's University School of Law (J.D.)
- New York University (B.A. in Mathematics)
- Carnegie Mellon University (Certificate in Cybersecurity Leadership)

Bar/Court Admissions

- New York
- U.S. Court of Appeals for the Second Circuit
- U.S. Court of Appeals for the Federal Circuit
- U.S. District Court for the Western District of New York
- U.S. District Court for the Eastern District of New York
- U.S. District Court for the Southern District of New York

Practices

- Business
- Intellectual Property and Technology
- Cybersecurity and Data Privacy
- Class and Collective Action Litigation

- Defense of patent infringement claims against financial institutions, medical device manufactures, and computer software/hardware companies
- Defense of Whistleblower retaliation claims under OSHA in the Department of Labor

Honors & Affiliations

- *Buffalo Business First*, Legal Elite of Western New York, 2020
- *Buffalo Business First*, 40 Under 40, 2020
- Co-Chair, Privacy, Big Data & Cybersecurity Committee, New York Intellectual Property Law Association, 2020
- Upstate New York Super Lawyers Rising Stars, 2013-2015
- Former president, St. John's University School of Law Intellectual Property Law Society

Representative Presentations

- NY SHIELD Act – Data Security Standards Set to Protect New York Resident Data, SUNY Buffalo State College, April 30, 2020
- Securely Working from Home During the COVID-19 Pandemic, iSecure, April 23, 2020
- NYS Shield Act In Review, iSecure, March 24, 2020
- GDPR Compliance for Higher Education Websites, New York City, January 15, 2020
- Cybersecurity Compliance Landscape 2020 Panel, Rochester Security Spill, November 21, 2019
- Interactive Panel: NY Social Media Guidelines, New York Intellectual Property Law Association One-Day Patent CLE Seminar, November 13, 2019
- Changes to NYS Data Privacy Laws, Bond Buffalo Labor and Employment Law Seminar, October 24, 2019

Representative Publications

- "COVID-19: Now Infecting Cybersecurity," *New York Law Journal*, April 10, 2020
- Quoted in "You Might Not Want to Open That COVID-19 Email," *Buffalo Law Journal*, March 27, 2020
- "Maintain Your Network: Tips on Returning to Work After Parental Leave," *Managing Intellectual Property*, January 10, 2020
- "Don't Sweat It," *Buffalo Law Journal*, January 4, 2020
- "New State Law Places Emphasis on Data Security," *Buffalo Law Journal*, December 9, 2019
- "Small Business: How New York's New SHIELD Act Could Affect Your Firm," *Newsday*, November 24, 2019

Other Activities

- Board Member, Buffalo Society of Natural Sciences, Buffalo Museum of Science
- Board of Directors, YWCA of Western New York

- Secretary, Board of Directors, TechBuffalo
- Advisory Board, Data Science & Analytics Master of Science program, SUNY Buffalo State College
- Advisory Board, Professional Applied and Computational Mathematics Master of Science program, SUNY Buffalo State College



Steven Fairchild
Fairchild Law

Mr. Steven Fairchild began his legal career in 2006 at Morgan & Finnegan (with fellow panelists Mrs. Jessica Copeland and Mr. Steven Purdy). Subsequently, Mr. Fairchild worked on the Boniva patent litigation at Loeb & Loeb. Mr. Fairchild later formed his own firm, Fairchild Law, and handles intellectual property litigation and patent prosecution. He has been a member of the patent bar since 2012. Mr. Fairchild has a J.D. from Georgetown and both a B.S. and M.S. in biology.



Steven Purdy

Corporate Litigation Counsel
IBM

Steven Purdy has been Corporate Litigation Counsel at IBM since 2013. Steven manages U.S. litigation matters in the fields of intellectual property, labor & employment, and commercial services disputes. In addition, he serves as a liaison for IBM litigation arising in the Asia Pacific region. Steven works with IBM's Product Security Incident Response Team (PSIRT) regarding issues related to security vulnerabilities in IBM products and also coordinates with IBM's Corporate Security Incident Response Team (CSIRT) to investigate and respond to significant data security breach incidents involving IBM's network, cloud infrastructure, and managed services environments for IBM clients.

Prior to joining IBM, Steven practiced IP litigation at Locke Lord LLP and Morgan & Finnegan LLP. He received a Bachelors Degree in Mechanical Engineering from Oklahoma State University and a J.D. from Georgetown University Law Center.



Diana Santos
Memorial Sloan Kettering Cancer Center

Diana G. Santos is Assistant General Counsel at Memorial Sloan Kettering Cancer Center, focusing information technology transactions. Prior to joining MSK, Diana was Associate Counsel at the New York Genome Center, where she worked on IT and collaboration agreements as well as IP and data privacy issues, and an Associate in the IP departments of Willkie Farr & Gallagher LLP and Ropes & Gray LLP, where she worked on both litigation and transaction matters.

Diana is an active member of various legal organizations, including New York Intellectual Property Law Association, LatinoJustice, and the Hispanic National Bar Association, where she holds or has held leadership positions.

Diana graduated from The Cooper Union with a Bachelor's of Engineering, and the University of Pennsylvania with a Master's in Biotechnology. Diana received a J.D. from Fordham University and an LL.M. in European Law from Université Paris 2 Panthéon-Assas in 2010.

Ksenia Takhistova, M.S., J.D.



Ms. Ksenia Takhistova is a Co-Chair, Director and Legal Counsel at CME, Inc., a non-profit organization dedicated to accelerating diverse STEM talent and leadership for sustainable innovation since 1954. Before she joined the company, Ksenia spent over ten years as an attorney in private practice, at an IP boutique Kenyon & Kenyon and an AmLaw100 Firm Hunton Andrews Kurth. She is an experienced IP litigator and technology attorney who counsels clients on US intellectual property law issues across a wide variety of modern and emerging technologies. Ksenia has substantial experience in all aspects of litigation, representing both plaintiffs and defendants in patent cases before the Federal District Courts, at the International Trade Commission, in post-grant proceedings at the US Patent and Trademark Office, and before the Federal Circuit. She also handles other IP-related disputes, including trade secret, false advertising, and antitrust issues, in both Federal and State Courts, and has been named by Super Lawyers as a New York Rising Star in IP litigation in 2017, 2018 and 2019.

Ksenia also represents clients in tech transactions, including IP portfolio licensing, technology-focused joint ventures and spinoffs, negotiates various technology-related agreements, and performs M&A due diligence and opinion work, including freedom-to-operate, patentability, infringement and validity analyses. Drawing on her extensive educational and research background in the mechanical and chemical engineering arts, she is able to effectively advise clients and handle disputes in a broad array of technical fields, such as mechanical and medical devices, electrical and computer technology, life sciences, chemical, materials, and consumer products. Ksenia frequently speaks at domestic and international IP law conferences and serves as a mediation coach for VLA. She is an elected Board member of Leading Women in Technology, a non-profit dedicated to empowering women to grow their knowledge, leadership skills and network in order to map their own paths to career success and achieve greater personal and professional impact. Ksenia is a long-time member and supporter of NYIPLA, and frequently co-authors amicus briefs on substantive legal issues of importance to the IP profession,

She holds an M.S. in Chemical Engineering from University of Notre Dame, an M.S. in Mechanical Engineering from Moscow State University, and a J.D. from Rutgers Law School. She interned at the technology transfer office of the NJ Institute of Technology and clerked at the NJ Law Revision Commission.

Nineteen Hundred and Twenty-two

NYIPLA[®]

New York
Intellectual Property
Law Association

Preserving A/C Privilege & WP Immunity in Patent Litigation

Ksenia Takhistova,
Director and Legal Counsel, CME Inc.

November 12, 2020

Bond

Maintaining A/C Privilege &
Work Product Immunity in Post-
Breach Forensic Reports
(After *Capital One*)

NYIPLA Virtual Fall Patent CLE Series

November 12, 2020, 1:00 pm – 2:00 pm EST

Jessica L. Copeland, Esq.



Commitment • Service • Value • Our Bond

Protections

- **Work Product**

- The work product doctrine protects documents and tangible things prepared in anticipation of litigation or trial from disclosure to third parties by or for another party or its representative.

- **Attorney-Client Privilege**

- The attorney-client privilege protects confidential communications between attorneys and their clients that relate to the request for, or rendering of, legal advice.

Overview

- If a document is not protected it can be compelled to be turned over to an opposing party during litigation.
- **Question:** When can a post-breach forensic report be considered confidential under the work product doctrine?
- **Test:** Considering the totality of the circumstances the report was created because of anticipated litigation **and** it would not have been prepared in substantially similar form but for the prospect of litigation.
- Moving party bears the burden of showing how the breach would have been investigated differently if not for the litigation.

In re Capital One Consumer Data Security Breach Litigation

Eastern District of Virginia-May 26,2020

- **Holding:** Report was not protected.

Facts

- Capital One and Mandiant had a previously existing agreement to ensure a quick response to a cybersecurity incident with a paid retainer designated as a “Business Critical” expense not a “Legal Expense.”
- After the breach, outside counsel was retained.
- Outside counsel ordered the report from Mandiant to be done by its direction.

In re Capital One Consumer Data Security Breach Litigation ..Continued

- The nature of the work performed in response to the breach was essentially the same as outlined in previously existing agreement.
- An internal investigation also occurred.
- The report was given to outside counsel, Capital One's legal dept., the board of directors, various employees, four regulators, and an outside accounting firm.
- The report was used for various business and regulatory purposes.

In re Experian Data Breach Litigation

Central District of California- 2017

- **Holding:** Report was protected under the work product doctrine.

Facts

- Experian had engaged with Mandiant prior to the breach regarding a separate matter.
- Immediately retained outside counsel who ordered the report.
- Purpose of the report was to help outside counsel provide legal advice to Experian regarding the attack.
- The full report was not given to the incident response team.

In re Premera Blue Cross Customer Data Security Litig.
District of Oregon- 2017

- **Holding:** Report was not protected.

Facts

- Mandiant was performing an ongoing investigation when malware was discovered.
- Outside counsel was then hired and entered into an amended statement of work with Mandiant.
- Outside counsel had full supervision of the report.
- The scope of the work was substantially the same as outlined in the previous agreement.
- There was only one investigation performed.

In re Dominion Dental Serv. USA, Inc. Data Breach Litig.
Eastern District of Virginia- 2019

- **Holding:** Not protected

Facts

- Mandiant was hired prior to the breach “to investigate, prevent, and remediate data breaches.”
- Outside counsel entered into another SOW with Mandiant incorporating the previous SOW and including virtually the same deliverables as the statement of work that was in existence prior to the breach.

Factors

- Previous agreements/ On going relationships
- Who ordered the report
- Nature of the work done
- Additional reports
- Recipients
- Payments
- Usage

(Non-precedential)

Best Practices

- Have practices in place to protect documents that could be covered under work product doctrine.
- If there is an ongoing agreement it should be of a different scope than that that would be required if there is a breach.
- Engage outside counsel immediately after a breach.
- Have outside counsel retain and supervise third parties performing services relating to the data breach.
- Have outside counsel contract with a firm different from the retained firm.
- Document expenditures.

Best Practices

- Limit recipients of any documents drafted in response to the breach.
- Do not share protected information with third parties.
- Limit use of documents to legal uses.
- Have an additional report prepared for business and regulatory uses.
- Be aware incase of a global data breach there are different rules of privilege in different countries.

Pre-Incident Reports

- Not work product
- Counsel's communications with agents and consultants whom counsel retain to help provide legal advice to the client can be protected under Attorney Client Privilege. (*United States v. Kovel*, 296 F.2d 918, 921 (2d Cir. 1961)).

Questions?

- Thank you for your time today, please feel free to contact me or connect with me on LinkedIn if you have any follow up questions on this topic.



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A/C Privilege and WP Immunity in Litigation

▶ **Attorney-Client privilege—Common Law:**

- ▶ “Confidential disclosures by a client to an attorney made in order to obtain legal assistance are privileged.”

Fisher v. United States, 425 U.S. 391, 403 (1976)

- ▶ “(1) Where legal advice of any kind is sought (2) from a professional legal adviser in his [or her] capacity as such, (3) the communications relating to that purpose, (4) made in confidence (5) by the client, (6) are at his [or her] instance permanently protected (7) from disclosure by the legal adviser, (8) except the protection be waived.”

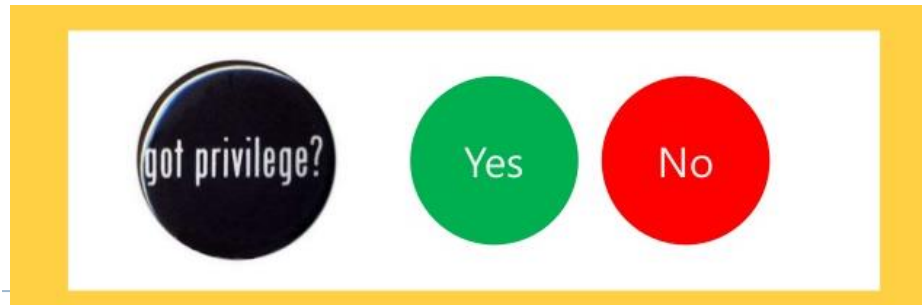
8 J. Wigmore, *Evidence* § 2292 (McNaughton rev. ed. 1961 & Supp. 1991);
see *also*, Fed. R. Evid. 501.

A/C Privilege and WP Immunity in Litigation

- ▶ **Work Product Immunity:**
- ▶ “(A) Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent). . . . [T]hose materials may be discovered if:
 - ▶ (i) they are otherwise discoverable under Rule 26(b)(1); and
 - ▶ (ii) the party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.
- ▶ (B) If the court orders discovery of those materials, it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative concerning the litigation.”

A/C Privilege and WP Immunity in Litigation

- ▶ **A/C privilege and WP immunity—use different tests:**
- ▶ **A/C privilege**
 - ▶ “primary purpose” of communication (maj.)
 - ▶ “significant purpose” (min.)
- ▶ **WP immunity**
 - ▶ “in anticipation of”/“because of” litigation (maj.)
 - ▶ the document would not exist “but for” litigation (min.)



A/C Privilege and WP Immunity in Litigation

- ▶ **A/C privilege and WP immunity—majority tests:**
 - ▶ **A/C privilege:** “where the communication involves in-house counsel, who normally perform a business as well as a legal role, ... the “primary purpose” of the communication must be to obtain or give legal advice.”
 - ▶ **WP Immunity:** “[A] document created because of anticipated litigation ... does not lose work-product protection merely because it is intended to assist in the making of a business decision influenced by the likely outcome of the anticipated litigation.”

Limestone Memory Sys. LLC v. Micron Tech., Inc., No. SA CV 15-0278-DOC,
Order 8 at 9, 11 n.3 (C.D. Cal. Feb. 19, 2019)
(quoting *United States v. Adlman*, 134 F.3d 1194, 1195 (2d Cir.1998))

A/C Privilege and WP Immunity in Litigation

How can you protect A/C privilege and WP immunity?

- ▶ IP portfolio evaluations
 - ▶ Patent ownership transfers;
 - ▶ Licensing negotiations;
 - ▶ Using IP assets as collateral to obtain business or litigation financing
- ▶ Internal IP investigations
 - ▶ Monitoring competitors' patent portfolios;
 - ▶ Reverse-engineering of a product or process;
 - ▶ Infringement analysis by third-party consultants;
 - ▶ Collecting and preserving documents from foreign corporate entities



"I assure you that everything you say to me will be held in the strictest confidence."

A/C Privilege and WP Immunity in Litigation

- ▶ **A/C privilege or WP immunity for ownership transfer and licensing discussions?**
- ▶ **YES:** communications with counsel are protected by A/C privilege based on “(1) the substance of the communications themselves ...; and (2) the proximity in time between those communications and the filing of this litigation.”

Limestone, No. SA CV 15-0278-DOC,, Order 8 at 9-13, 16-17

- ▶ **NO:** Communications between patent owner and counsel involving prelitigation process not protected because they relate to the plaintiff’s ordinary course of business and licensing plans.

Diagnostics Sys. Corp. v. Symantec Corp.,
2008 WL 9396387 at *6, 10-11 (C.D. Cal. 2008)

A/C Privilege and WP Immunity in Litigation

- ▶ **A/C privilege or WP immunity for ownership transfer and licensing discussions?**
- ▶ **YES:** “the joint client doctrine and the **community of interest** doctrine apply to and protect legal advice and communications between the ... patentee and attorneys of its optionee/licensee.”

In re Regents of the Univ. of California, 1010 F.3d 1386, 1391 (Fed. Cir. 1996);
see *TC Tech. LLC v. Sprint Corp.*, No. 16-cv-153-RGA (D. Del. Dec. 13, 2018);
Crane Sec. Techs., Inc. v. Rolling Optics, AB, 230 F. Supp. 3d 10 (D. Mass. 2017);
Rembrandt Patent Innov. v. Apple Inc., 2016 WL 427363 (N.D. Cal. Feb. 4, 2016)

- ▶ **NO:** retention of royalty rights alone may be insufficient for the common-interest privilege

Delaware Display Group LLP v. Lenovo Group Ltd.,
Nos. 13-2108, -2109, and -2112-RGA (D. Del. Feb. 23, 2016).

A/C Privilege and WP Immunity in Litigation

- ▶ **Work product immunity for litigation funding documents?**
- ▶ **NO** under "But for litigation" test...
- ▶ The documents were not prepared in anticipation of litigation, but for the primary purpose of obtaining a loan from the financier
- ▶ No "common interest" exception, because at the time the documents were created, there was no common legal interest b/w plaintiff and financier

Acceleration Bay LLC v. Activision Blizzard, Inc.,
2018 WL 798731, at *2-3 (D. Del. Feb. 9, 2018).

A/C Privilege and WP Immunity in Litigation

- ▶ **Work product immunity for litigation funding documents?**
- ▶ **YES** under “Because of litigation” test
- ▶ Because litigation funding agreements “would not have been created in substantially similar form but for the prospect of [the] litigation ..., [t]he agreements therefore satisfy the ‘because of’ test and constitute work product.”

Continental Circuits LLC v. Intel Corp.,
435 F.Supp.3d 1014, 1020-21 (D. Ariz. 2020)

- ▶ “[T]he work product protection for litigation funding documents is not waived when such documents containing confidentiality provision are disclosed to litigation funders with common interests.”

Impact Engine, Inc. v. Google LLC, 3-19-cv-01301,
Discovery Order (S.D. Cal. Oct. 20, 2020)

A/C Privilege and WP Immunity in Litigation

- ▶ **A/C privilege or WP immunity for internal IP (and other) investigations?**
- ▶ **YES** When “dominant purpose” of the investigation by non-attorneys is well-documented by counsel
 - ▶ Dual purpose may be ok: a company conducted an investigation both to comply with government regulations and to obtain legal advice

In re Kellogg Brown & Root, Inc., 756 F.3d 754, 760 (D.C. Cir., 2014)
- ▶ **YES** When attorneys are involved in fact-finding and synthesizing information
 - ▶ E.g., materials prepared during an internal investigation in a trade secrets case

Mattel, Inc. v. MGA Enter't, Inc.,
2010 WL 11463909, at *5 (C.D. Cal., 2010)

A/C Privilege and WP Immunity in Litigation

- ▶ **A/C privilege or WP immunity for internal IP (and other) investigations?**
- ▶ **YES** When business and legal purposes are intertwined
 - ▶ E.g. a briefing document regarding product liability litigation prepared by counsel for the BoD

In re Smith & Nephew Birmingham Hip Resurfacing Hip Implant Prod. Liab. Litig., 2019 WL2330863, at *3&n.4 (D. Md. May 31, 2019).

- ▶ **YES** When outside counsel is involved
 - ▶ "the retention of outside litigation counsel to advise an internal investigation [is] an important factor in determining whether an internal investigation is being conducted for the purpose of obtaining legal advice for the company."

Parneros v. Barnes & Noble, Inc., 332 F.R.D. 482, 494 (S.D.N.Y. 2019)

A/C Privilege and WP Immunity in Litigation

- ▶ **A/C privilege or WP immunity for internal IP (and other) investigations?**
- ▶ **NO** A/C or WP protection for documents and communications that “do not involve an attorney and make no reference to a legal objective”
 - ▶ Emails between patentee and outside consultant about prior art search and attached invalidity search report
 - ▶ Emails between patentee and consultant “for purpose of assembling data” and information provided in response to such emails
 - ▶ Email among non-attorney personnel of patentee regarding an accused product

Questions?

Waiving Privilege

During Patent Prosecution

Steven R. Fairchild, Esq.

Can You Waive Privilege During Patent Prosecution?

YES!!!!

How it is waived?

- Depends on Local Circuit law
 - Federal Circuit applies regional waiver law
 - *In re Visx, Inc.*, 18 Fed. Appx. 821 (Fed. Cir. 2001) (citing *In re Pioneer Hi-Bred Int'l*, 238 F.3d 1370 (Fed. Cir. 2001) (tax case)
 - *In re Visx, Inc.* is unpublished, but cited by District Courts
- Anything sent to the USPTO can be the basis for waiver
 - Information Disclosure Statements (“IDS”)
 - Remarks and arguments

We're just following the statute - so no waiver, right?

- Patent Applicants must submit IDS documents
 - 37 C.F.R. § 1.97(c)
- *Samsung SDI Co., LTD v. Matsushita Elec. Indus. Co.*, LTD 2007 U.S. Dist. LEXIS 90455 (C.D.Cal. 2007) Citing *Board of Trustees of the Leland Stanford Junior University v. Molecular Systems, Inc.*, 237 F.R.D. 618, 624-26 (N.D.Cal. 2006)
 - *Samsung SDI* cites *Visx, Inc.*
- “A disclosure of contents of an attorney client communication made to the PTO for the purpose of gaining patent protection is not protected.”
- “Defendants’ communications with the PTO should not be shielded from waiver merely because Defendants acted under statutory requirements.”

Scope of Waiver

- Depends on Regional Circuit law
- Limited to the subject matter waived

In re Visx, Inc.

- Appealed an order from N.D. California directing production
- To overcome rejection for lack of enablement, Applicant submitted an IDS which discussed a related EPO application. They wrote:
 - “Those papers assert that the Trokel application does not clearly and unambiguously suggest the ablation of corneal tissue over the optically active area of the cornea to effect a curvature change. *However, those assertions are incorrect, at least under United States law, and were not made at the direction or suggestion of anyone at the assignee of this application. Moreover, no one at the assignee conveyed any information to that effect to the British chartered patent agent.*” (Emphasis in case)
- (1) Was there waiver? (2) What was the scope?

In re Visx, Inc.

Was there waiver?

- Affirmed district court's ruling
- Considered to be summaries of attorney-client communication
- “By stating that no one at VISX had directed the British patent agent to make the particular statement to the EPO, VISX made representations about the contents of communications and sought to use those representations to its benefit. By making what amounted to a limited disclosure of the contents of attorney-client communications for strategic purposes, VISX waived its privilege concerning communications with the British patent agent on the same subject matter.”

In re Visx, Inc.

Scope of waiver?

- District court had ordered production of all relevant documents that applicant had sent to the British patent attorney and “whatever documents VISX reviewed upon which it based its representations to” the USPTO
- Federal Circuit affirmed
- “Absent such a disclosure, VISX would be asking Nidek, in effect, to take VISX at its word that nowhere in the materials VISX reviewed preparatory to making the statement to the PTO was there any authorization for the patent agent to make the subject statement to the EPO. Having used otherwise privileged communications to support an assertion that worked to its advantage, VISX cannot now expect Nidek to attempt to respond to that assertion without access to all the facts that pertain to the accuracy of VISX's claim.”

Practice tips

- Examine file histories of all related patent applications
 - Including foreign application
 - Whether you represent the patentee or infringer
- Patent prosecutors should have litigation team review PTO submissions

Fisher v. United States, 425 U.S. 391, 403 (1976)

Hickman v. Taylor, 329 U.S. 495, 509–12 (1947)

Limestone Memory Sys. LLC v. Micron Tech., Inc., No. SA CV 15-0278-DOC, Order 8 at 9, 11 n.3 (C.D. Cal. Feb. 19, 2019)

United States v. Adlman, 134 F.3d 1194, 1195 (2d Cir.1998)

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Rembrandt Patent Innov. v. Apple Inc., 2016 WL 427363 (N.D. Cal. Feb. 4, 2016)

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In re Smith & Nephew Birmingham Hip Resurfacing Hip Implant Prod. Liab. Litig., 2019 WL2330863, at *3&n.4 (D. Md. May 31, 2019).

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