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Attorney-Client Privilege and Work Product Doctrine/Immunity of the U.S. Patent Litigation

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Abstract

This article discusses the application of attorney-client privilege and work product doctrine/immunity to patent litigation to protect some information from being disclosed. First, the authors will introduce their basic concepts. Then the issues and related questions which result from their application to patent litigation will be discussed. The topics related to attorney-client privilege consist of whether it is applicable to patent attorneys or patent agents, and whether it protects factual and technological communications. The topic regarding work product doctrine/immunity is whether it protects documents produced by patent attorneys during patent prosecutions. At last, in addition to explain circumstances of waiver, the authors will discuss whether work product immunity would be waived as well if one waives attorney-client privilege.

Keywords: U.S. patent litigation, attorney-client privilege, work product doctrine/immunity, discovery, waiver