

Haynes and Boone Files ACC Amicus Brief on In-House Counsel Privilege

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PRACTICES Appellate, Patents

In an amicus brief for the Association of Corporate Counsel in a patent infringement case, lawyers from Haynes Boone argued that in-house counsel should receive the same confidentiality protections as outside counsel for their attorney-client communications.

The [brief](#), written by Haynes Boone Partner M.C. Sungaila and Associate Marco Pulido, was filed Dec. 11 with the U.S. Court of Appeals for the Federal Circuit in a case Johns Hopkins University brought against Alcon Laboratories Inc. and Alcon Research alleging patent infringement.

Corporate Counsel, an AmLaw publication, [reported](#) that the case gave rise to a legal disagreement over the scope of attorney-client privilege when in-house counsel are involved, and the ACC is advocating for preserving the privilege for in-house counsel.

The report said that Alcon petitioned the Federal Circuit for a writ of mandamus because a trial court ordered production of post-complaint privileged communications and work product from in-house counsel that the company said would include “work product and communications regarding the merits of litigation defenses, details of trial strategy and settlement positions.”

Corporate Counsel quoted the amicus brief, which argued that the lower court’s order “ignores the modern day reality of in-house counsel’s role in litigation. If allowed to stand, the order would stifle the national and global trend of corporate clients employing in-house counsel as in-the-trenches litigators in order to reduce litigation costs, and relegates those inside counsel to ‘second-class’ litigator roles.”

The brief further argued that “in-house counsel take just as active a role in litigation as outside trial counsel, whether by appearing as counsel of record, assisting with litigation strategy, or relaying the ongoing state of the litigation so as to put the client in an informed position to, for example, make decisions and abide by regulatory obligations.” The district court order, the brief argued, “discourages full and frank post-complaint communications between in-house counsel and clients, and undermines the client-in-house counsel relationship.”

To read the full *Corporate Counsel* article, click [here](#).