Can Translations of Foreign Documents into English Ever Deserve Work Product Protection?

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In his February 27, 2013 “Privilege Points” release, Tom Spahn discusses the nuances of work product protection applied to translations into the English language.

Although the attorney-client privilege generally protects only confidential communications between clients and their lawyers, the work product doctrine can provide a far broader range of protection. Among other things, work product protection does not depend on a lawyer's participation, or on confidentiality.

In *Shionogi & Co. v. Intermune Inc.*, No. C-12-03495 EDL, 2012 U.S. Dist. LEXIS 173452, at *1 (N.D. Cal. Dec. 5, 2012), the court found that a party's translation of Japanese documents into English deserved work product protection, because plaintiff translated the documents "in furtherance of preparing Plaintiff's case." The court further held that the identity of those documents plaintiff thought important enough to translate also deserved work product protection. The court rejected defendant's effort to overcome plaintiff's work product protection – noting that defendant "focuses on the cost of translations, but such costs do not ordinarily constitute an undue hardship" that would justify overcoming the plaintiff's work product protection. *Id.* at *5. The court concluded that "Defendant has not shown a substantial need to piggyback on Plaintiff's translations because it can obtain its own." *Id.*

The work product doctrine rests on a fairly modest purpose – each litigant should prepare itself for litigation or trial, rather than "piggyback" on the other side's work.