

Constitutional Court of Hungary rules Unified Patent Court Agreement cannot be ratified

Kluwer Patent Blog


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The Hungarian Constitutional Court has ruled that the Unified Patent Court Agreement can't be ratified, as no appropriate mechanism for the ratification is available.

According to a report by Bristows, the Hungarian Minister of Justice, acting on behalf of the government, filed a motion (No. X / 01514/2017) on 18 July 2017, requesting the Court's opinion on the compatibility of the UPCA with the Hungarian Constitution, and on the appropriate mechanism for its ratification. The Court's decision of 26 June 2018, which was published here (in Hungarian language) today and says there is no such mechanism, 'means that an amendment of the Constitution would be required before Hungary may proceed to ratify the Agreement', according to Bristows. Although 'constitutional amendments are not as rare in Hungary as they are in other jurisdictions (...), it is to be presumed that this decision will delay Hungary's participation in the unitary patent and UPC project.'

The EPLAW's website reports an English language summary of the decision is  expected to be published at www.mkab.hu soon.

Up to now, 16 member states have ratified the UPCA. The big question is what will happen in Germany, where a constitutional complaint was filed last year against

German ratification of the UPCA. It is not clear when the Federal Constitutional Court (FCC) will decide on the case, though it is likely this will happen in the second half of this year. The complainant, patent attorney Ingve Björn Stjerna, argues that for ratification of the UPCA a two-thirds majority in both houses of parliament is required. He claims that ratifying the UPCA brings about an illegitimate transfer of sovereign rights from Germany to the EU and that UPC judges are not independent, among others.

The German complaint is a much bigger threat for the UP system than the Hungarian issue. It could potentially cause delays for the introduction of the Unitary Patent system or even derail it. In order for the system to start, German participation is required. Apart from that, there is a serious risk that the UK will have left the European Union by the time the FCC decides about the German case, which means the UK can no longer join the UP system and will lead to a lot of uncertainty about its future.

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