

German complaint against UPCA ratification on 2019 decision list Constitutional Court

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The Federal Constitutional Court of Germany (BVerfG) intends to decide on the complaint against German ratification of the Unified Patent Court Agreement this year. The case (2 BvR 739/17) is on [the 2019 decision list](#), which was published yesterday.

It doesn't come as a surprise. The UPCA case was on the 2018 list as well, but apparently the judges had no time for it. This year a decision seems more likely.



The UPCA case is the fifth in the list of cases which have been allocated to rapporteur Justice Huber in the Second Senate. According to a [Bristows report](#), the first two cases are well on their way, whereas the 'third case is the "EPO case" (in fact four cases all concerning, in effect, Germany's accession to the EPC) and there has been some speculation (...) that this may be heard together with the UPC case. Whether or not that is so, it appears highly likely that the UPC case will be decided this year (...).'

In its report, Bristows also refers to a claim by Agence Europe 'that it had been informed by the BVerfG's services that no date was set for the decision but that it should fall in the current year'.

The German decision is vital for the future of the Unitary Patent system. If the BVerfG dismisses the complaint, the German ratification formalities can be completed and the preparatory phase of the Unitary Patent system can start almost immediately. If the complaint is found to be justified or referred to the Court of Justice of the European Union for a decision, this could mean the end of the system or at least lead to serious delays.

Even if the complaint is dismissed, it is not entirely clear whether Germany will ratify the UPCA, because of the uncertainty about the UK's continued participation in the Unitary Patent project post Brexit. As [reported earlier on this blog](#), a representative of the Ministry of Justice has said the ratification will be dealt with in a responsible fashion, and the parameters have to be clear.