

Kluwer Patent Blog

Better Late Than Never - German Liberal Party Files Parliamentary Question on Unified Patent Court

Thomas Musmann (Rospatt Osten Pross) · Monday, November 2nd, 2020

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As reported previously on this [blog](#), the German ratification process for the Agreement on a Unified Patent Court (UPC) has been started [anew](#) after the Federal Constitutional Court (BVerfG) had [declared](#) the previous ratification act void because it had not been approved by parliament with the required 2/3 majority. Now there is yet another development. The liberal party which is currently in opposition has filed on 27 October 2020 a [parliamentary question](#) (Kleine Anfrage) on the UPC. Here are the most interesting bits in translation:

'1. Has the Federal Government commissioned an independent scientific cost-benefit analysis of the European patent reform, in particular with regard to the European Patent Court, and if so, what was the result of the analysis?

2. Given the risks for SMEs which the European Commission itself admits and the lack of a cost-benefit analysis, how does the Federal Government come to the conclusion [...] that European patent reform is beneficial to SMEs?

3. What measures has the Federal Government taken to ensure that the special needs of SMEs are taken into account in the design of the European patent reform, in particular in the proceedings before the European Court of Justice?

4. What measures has the Federal Government taken to ensure that SMEs can operate on an equal footing in proceedings before the UPC and that they are not structurally inferior to stronger competitors, particularly in terms of their cost situation?

5. Has the Federal Government made efforts to ensure that the special interests of SMEs are represented in the "panel of experts" of the Preparatory Committee of the Unified Patent Court?

If so, when and how was this done; if not, why not?

6. Has the Federal Government examined the compatibility of the UPCA with the Basic Law, in particular with fundamental rights and Union law, and if so, what aspects have been examined?

7. What consequences does the Federal Government see for the UPCA in the fact that the first attempt to ratify the UPCA by the institutions involved repeatedly revealed constitutional deficits?

According to the Rules of Procedure of the Federal Diet the government has to answer

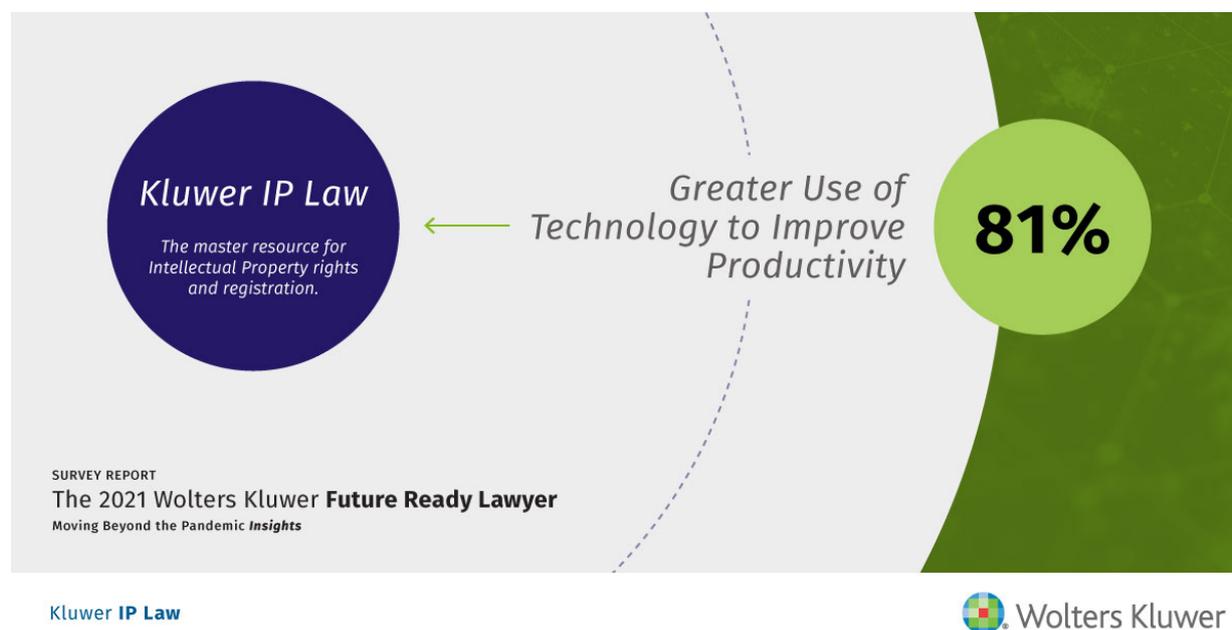
these questions within two weeks. Since the ratification of the UPC Agreement requires a 2/3 majority, the votes of the liberal party will be crucial for obtaining parliamentary approval of the agreement (see [here](#)). Therefore, it will be interesting to see the government's answers and their impact on the liberals' voting behavior.

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