

Kluwer Patent Blog

UPCA ratification bill progresses in German Bundestag – Academics: UPC not the best solution for Europe and for innovation

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(UPDATED) The German draft ratification bill of the Unified Patent Court Agreement will be discussed in the crucial legal committee of the Bundestag next Wednesday.

It is one of the issues that on the [agenda of the legal committee](#) for 25 November 2020, which was published today. According to [this report](#) of Bristows, the draft bill will also be considered in the Committee for Affairs of the EU and the Budget Committee, after which the (leading) legal committee will submit a report and recommendation to the Bundestag.



It will be interesting to see what position the liberal FDP takes in the discussion in the legal committee. As the draft ratification bill needs to be approved with a two-third majority, the votes of this liberal opposition party (which occupies 80 of the 709 seats in the Bundestag) are important. Last month the FDP filed [parliamentary questions](#) about the UPCA ratification bill (see [this post](#)), focussing mainly on the position of SMEs and the compatibility of the UPCA with the German constitution.

The German government [answered the questions](#) last week, stressing the advantages of the Unitary Patent system for European industry and the benefits for SMEs and arguing it has no doubt about the compatibility of the UPCA with German Basic Law or EU legislation: “Die Vereinbarkeit des EPGÜ mit dem Grundgesetz, insbesondere den Grundrechten, sowie mit dem Unionsrecht wurde umfassend geprüft.”

The ratification process is the second attempt to complete the formalities leading to full membership of the Unitary Patent system. Earlier this year the German Federal Constitutional Court declared invalid the parliamentary procedure which took place in 2017, because the UPCA ratification bill had been approved in the presence of no more than 35 members of the Bundestag.

The developments in Germany are being followed with great interest, as German support for the

UPCA and the Protocol for Provisional Application (under which practical preparations for the new Unified Patent Court can start in full) will trigger the start of the UP system, although two more member states will have to be found to approve the PPA. The case before the Constitutional Court and the Brexit have caused enormous delays, but the German government has always supported the UP system and is keen on completing the ratification procedure as soon as possible.

However, it seems likely that – after the constitutional complaint that was filed in 2017 by patent lawyer Ingve Stjerna – a new constitutional complaint will be filed as soon as the parliamentary procedure is completed, this time by the [FFII](#). Dr. Stjerna has also left open the possibility of filing a new complaint. This could further delay the entry into force of the system, or mean the end of it.

Position paper European academics

Last month, a group of over 30 European practitioners and academics [published a position paper](#) and stated “the Unified Patent Court system is not the best solution for Europe and for innovation”. They “urge all the decision-makers and persons involved in the process of adjusting the UPCA, following the withdrawal of the United Kingdom, **to pause** and to consider alternatives solutions”.

They “recall that the Unified Patent Court Agreement (UPCA) suffers some substantial deficiencies and constitutes a significant precedent that challenges the democratic and institutional processes in the EU. There is still time to reflect on the implications of these changes and to review the options for a EU patent system that could provide effective support for European innovation.”

Ireland

It was somewhat surprising that, despite the uncertainties concerning the UPC, a [report](#) appeared this week that Ireland planned to organize a referendum about the membership of the UPCA next year (the report was later adapted). Yesterday a spokesman for the Irish Department of Enterprise, Trade and Employment denied such referendum (required in the case of a transfer of jurisdiction for patent litigation from the Irish courts to a new international court) is imminent. In the *Irish Times* he said: “When there is greater clarity on the timeframe for the UPCA coming into effect, Ireland will move forward with its own ratification process (...).”

Voices within the Irish business and IP community [have argued](#) that Ireland should campaign to host the central pharma division of the UPC, which had been planned in London but which will have to find a new place due to the Brexit. Ireland would be the fourth candidate. Milan has officially announced its ambition to house the London central division, it is rumored that the Netherlands and France are interested in welcoming the division as well.

UPDATE: This article was updated on 21 November 2020 to include the position paper of European academics and practitioners

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