

Kluwer Patent Blog

Two new constitutional complaints in Germany against UPCA

Kluwer Patent blogger · Wednesday, December 23rd, 2020

(UPDATED) Two new constitutional complaints against ratification of the Unified Patent Court Agreement have been filed with Germany's Federal Constitutional Court.

The FCC confirmed to Kluwer IP Law it received the complaints: *“Regarding the Act on the Agreement of 13 February 2013 on a Unified Patent Court, two constitutional complaints have been filed and are pending under 2 BvR 2216/20 and 2 BvR 2217/20. A decision date is currently not foreseeable. I cannot give you the names of the complainants for data protection reasons. The communication of any procedural events or information on components of the procedural file during the ongoing proceedings is not possible.”*

According to several media reports, the complaints were filed last Friday, the very day the parliamentary ratification procedure in German ended with the approval of the UPC legislation by the [German Bundesrat](#).

According to a [report by Managing IP](#), the FCC declared a decision date was not known. “Neither the identity of the plaintiffs nor the grounds of the complaints are currently available.”

The complaints mean a new chapter in the ever longer history of the attempted creation of the Unified Patent Court and Unitary Patent system has begun.

After the Brexit referendum of June 2016, another severe blow to the project was dealt when in March 2017 patent lawyer Ingve Stjerna filed a constitutional complaint against the German ratification of the UPCA. It took the FCC three years to decide on the case, and it partly upheld the complaint as the UPC legislation had not been approved by the required two-thirds majority in parliament. As this formal point was enough to declare the ratification procedure invalid, the FCC did not judge on other, substantial points Stjerna had raised.

After the FCC's decision, last March, the German government speedily came with new ratification legislation, which was approved by a 88 percent majority in the German Bundestag late November and unanimously in the Bundesrat on 18 December 2020.

Without German ratification, the UPC nor the Unitary Patent can be launched. The new complaints could lead to further severe delays, although it isn't clear whether the FCC will accept the complaints and request the German Bundespräsident to refrain from signing the UPCA legislation into law as long as it hasn't decided on them, as happened when Stjerna filed his complaint in 2017.

Although it isn't clear who have filed the two new complaints, there are two obvious candidates: Dr Stjerna once more, and the Foundation for a Free Information Infrastructure (FFII), whose president Benjamin Henrion [has repeatedly stated he was preparing a claim](#). Henrion wasn't immediately available for comment. The most recent post on the website of Ingve Stjerna, where he has been following and commenting on developments regarding the UPCA, is from 11 December 2020.

UPDATE: *This blogpost was updated later on 23 December 2020 to include the reaction of the FCC to questions of the author and to add the remark about Dr Stjerna's website.*

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