

German ratification of Unified Patent Court Agreement put on hold

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The German ratification of the Unified Patent Court Agreement has been put on hold at the request of the German Federal Constitutional Court.

The FCC has confirmed this in answer to questions by Kluwer IP Law. The FCC has asked Bundespräsident Frank-Walter Steinmeier, to refrain from signing the bill into law, because two constitutional complaints were filed against ratification of the UPCA on 18 December 2020 (2 BvR 2216/20 and 2 BvR 2217/20), the day the Bundesrat completed the parliamentary ratification procedure by unanimously approving the bill.

A spokesperson for the Federal President has indicated he will indeed wait with signing the bill.

Unless the FCC throws out the complaints as inadmissible or manifestly unfounded in the short term, it means the ratification of the UPCA in Germany could be delayed severely once more. The first constitutional complaint against UPCA ratification in Germany was filed in March 2017. It took the FCC three years to decide on this complaint, and to partially uphold it, on formal grounds.

It is not unthinkable that due to new delay in Germany, combined with the departure of the UK from the EU and the Unitary Patent project, which has led to legal uncertainty and has made the UP and UPC less attractive for the industry, the new patent system will never see the light of day.