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Belgian Constitutional Court rejects action against UPC ratification

Pieter Callens (Eubelius) · Friday, May 22nd, 2015

The European patent community and especially the people involved in the preparation of the Unified Patent Court were stirred up in March 2015 by an action launched before the Belgian Constitutional Court. On 10 March 2015 the Belgian non for profit association ESOMA (European Software Market Association) had launched a [nullity action](#) against the Belgian law of 27 May 2014 regarding the ratification of the Agreement on a Unified Patent Court. ESOMA had based its action on three pleas. First, ESOMA argued that the ratification of the UPC agreement would lead to a discrimination based on language because the ratification would lead to the applicability of the Regulations on the Unitary Patent and the language regime of these Regulations would discriminate the Dutch speaking population of Belgium. Secondly, the ratification would violate the principle of legality because the Rules of Procedure of the UPC shall be adopted by the administrative committee of the UPC and not by any of the parliaments of the member states (including not by the Belgian parliament). Thirdly, the decisions of the European Patent Office would fall outside the competence of Belgian courts or the UPC, which would be contrary to the rule of law.

Although all arguments could probably be easily put aside, certainly after the [Court of Justice decision](#) rejecting the actions of Spain against the Unitary Patent Regulations, the mere fact that a Constitutional action was launched in one of the member states was a [relevant news item](#) for the UPC community to follow.

Yesterday, the Belgian Constitutional Court has set aside the excitement and/or fear of opponents and supporters of the unitary patent package with a [two-pager judgment](#). It appeared that the action of ESOMA came too late... The normal deadline to file a nullity action against a Belgian law based on constitutional arguments is six months after the publication of the law. However, constitutional actions against a law ratifying a treaty have to be filed **within sixty days** after the publication of the law. The law of 27 May 2014 regarding the ratification of the UPC agreement was published in the Belgian Official Gazette on 9 September 2014. Consequently, the action of ESOMA was filed almost four months too late. Therefore, the Constitutional Court has declared the action inadmissible.

So far for Belgian constitutional actions against the Unitary Patent package...

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