

# Kluwer Patent Blog

## Breaking News: Germany's Federal Constitutional Court pulls Emergency Break on UPC Agreement

Thorsten Bausch (Hoffmann Eitle) · Tuesday, June 13th, 2017

Another significant delay – or even more substantial – trouble seems to be ahead of the Unitary Patent system, due to today's decision of the German Constitutional Court (*Bundesverfassungsgericht*) in Karlsruhe. The *Bundesverfassungsgericht* has requested the German President not to sign the bills already approved by Bundestag and Bundesrat on the ratification of the Unitary Patent system.

This has been reported by [Hendrik Wieduwilt](#) of the *Frankfurter Allgemeine Zeitung*, who I would consider a reliable source. Mr Wieduwilt says the news was confirmed by the press offices of the *Bundesverfassungsgericht* and the German presidency. According to his report, an unknown private person is behind the complaint against the UP system for infringing the German Constitution.

My own interpretation (and at this point this is mere speculation, but too tempting not to mention it!) is that the *Bundesverfassungsgericht*'s request to the President is based on the pending constitutional appeals against the EPO on which I wrote [earlier in this blog](#). If the *Bundesverfassungsgericht* is of the preliminary view that any of the pending four constitutional complaints may have merit, it would make eminent sense to request the President, at least for the time being, not to sign the UPCA ratification bills and first await the Federal Constitutional Court's decision on these appeals, in order not to create *faits accomplis*. The decisions on these four appeals are expected later this year, but an exact point in time has not yet been defined.

The immediate consequence of the *Bundesverfassungsgericht*'s request will be a further delay in the ratification of the UPCA by **at least** a few months. Germany is one of the three member states that has to ratify before the system can be launched.

And if the Constitutional Appeals are found to have merit, then the delay will be pretty substantial, in my opinion. Namely, if the current EPO system is found to violate the constitutional right to a judicial review of a decision of an office, the EPO system will have to be changed much more fundamentally than by the previous reforms (who were by many considered to be a fig leaf only) and a truly independent judiciary will need to be established. If so, I would expect the *Bundesverfassungsgericht* to set generous transitional terms, yet I doubt that it would consider the UPCA constitutional before this reform has been actually implemented.

We will probably know more by tomorrow when reports on the reasoning of the

Bundesverfassungsgericht's request are likely to appear.

I would like to express my special gratitude to our indefatigable Kluwer News Blogger, who alerted me to this piece of news. Stay tuned for more in the next couple of days!

*To make sure you do not miss out on regular updates from the Kluwer Patent Blog, please [subscribe here](#).*

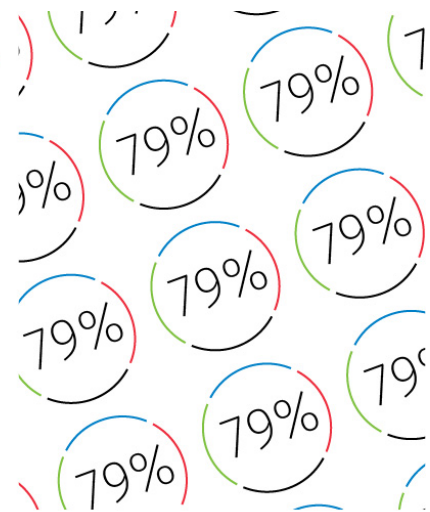
## Kluwer IP Law

The **2022 Future Ready Lawyer survey** showed that 79% of lawyers think that the importance of legal technology will increase for next year. With Kluwer IP Law you can navigate the increasingly global practice of IP law with specialized, local and cross-border information and tools from every preferred location. Are you, as an IP professional, ready for the future?

Learn how **Kluwer IP Law** can support you.

79% of the lawyers think that the importance of legal technology will increase for next year.

**Drive change with Kluwer IP Law.**  
The master resource for Intellectual Property rights and registration.



2022 SURVEY REPORT  
The Wolters Kluwer Future Ready Lawyer  
Leading change

This entry was posted on Tuesday, June 13th, 2017 at 9:52 am and is filed under [EPC](#), [European Union](#), [Unitary Patent](#), [UPC](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. Both comments and pings are currently closed.

