

Kluwer Patent Blog

Preparatory Committee regrets pause in German ratification Unified Patent Court Agreement

Kluwer Patent blogger · Tuesday, June 27th, 2017

Chairman Alexander Ramsay of the Preparatory Committee of the Unified Patent Court regrets that a constitutional complaint has led to the suspension of the German ratification process of the UPC Agreement.

In a message which was [published on the committee's website today](#), Ramsay states: 'In Germany another layer of complexity has been added due to a suit lodged in the German Constitutional Court concerning the German ratification of the UPCA. Unfortunately this has brought a pause to the German ratification of the UPCA and the Protocol on Provisional Application.'

As is clear from his message, the chairman doesn't know more than others about who and what is behind the mysterious constitutional complaint (2 BvR 739/17), which was filed at the end of March, but was reported on for the first time only [two weeks ago](#) by the *Frankfurter Allgemeine Zeitung*.



Ramsay: 'It is difficult to get a clear understanding of what is the status of the suit and what it is about, since there is not much information publicly available. The complaint has not been notified to the German Government or the Parliament. According to publicly available information an unnamed individual has lodged a complaint against the bill regarding the German ratification of the UPCA and has also submitted a request for preliminary/emergency measures ordering the suspension of the ratification until the Court has decided on the merits of the case. The Court seems to have informed the President of the Republic informally and as seems to be the usual practice in Germany, the President has decided not to proceed with the ratification until the Court has decided on the request for preliminary measures.'

Germany is one of the three member states that have to ratify the UPCA and to participate in

Protocol on Provisional Application (PPA) before the Unitary Patent system can start. In the plans of the Preparatory Committee, Germany will be the last and decisive ratifying member state for the launch of the system.

Earlier, there has been speculation that the suit may be linked to four appeals concerning supposed violations of constitutional rights at the European Patent Office. The EPO has an important role in the Unitary Patent system. In answer to questions of the Kluwer Patent Blog, a spokesman of the German Federal Constitutional Court wrote: ‘The four constitutional complaints (...) are part of the [annual preview for 2017](#). (...) In these cases, the Second Senate [of the Court, ed.] intends to reach a decision during the current year, but there is no direct link between these cases and the constitutional complaint 2 BvR 739/17.’ Still, this answer leaves open the possibility that there is an indirect link.*

The spokesperson of the Court also wrote: ‘The case will now be reviewed with the appropriate urgency as the constitutional complaint was accompanied by a [motion for a temporary injunction](#) (...). Though, a concrete date of decision cannot be assessed.’



In today’s message, chairman Ramsay pointed out progress regarding the Unitary Patent system is ‘being made in several Contracting Member States. In Estonia the necessary laws have been passed and the last steps towards formal ratification are now being taken. Furthermore the UK Government has recently laid the orders implementing the Protocol on Privileges and Immunities in Westminster, thereby signalling a firm intent and commitment on the road to ratification.

However, even considering Estonia and the UK, three additional approvals of the PPA, including Germany, are necessary in order for the preparations to be completed for this final phase (...).

Under the current circumstances it is difficult to maintain a definitive starting date for the period of provisional application. However, I am hopeful the situation regarding the constitutional complaint in Germany will be resolved rather quickly and therefore I am hopeful that the period of provisional application can start during the autumn 2017 which would mean that the sunrise period for the opt out procedure would start early 2018 followed by the entry into force of the UPCA and the UPC becoming operational.’

Ramsay announced he will communicate a more detailed timetable ‘as soon as the picture is clearer’.

**In reaction to an additional question by Kluwer IP Law, the Court spokesperson wrote:*

‘The four constitutional complaints (...) on the one hand and the constitutional complaint 2 BvR 739/17 on the other hand are treated by the Second Senate separately. Therefore there is no direct link, but of course all the cases raise questions concerning patent law.’

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