

Kluwer Patent Blog

Constitutional Court asks for comments on German complaint against Unified Patent Court Agreement

Kluwer Patent blogger · Wednesday, September 6th, 2017

The Federal Constitutional Court in Germany has started investigating the constitutional complaint that was filed earlier this year against the German ratification of the Unified Patent Court Agreement. As German attorney at law Dr. Ingve Björn Stjerna reported last week, the Court ‘most recently sent the constitutional complaint (earlier reported on by Kluwer IP Law [here](#)) to several parties to the proceedings and to third parties for their comments’.

In answer to questions of Kluwer IP Law, a spokesperson of the Federal Ministry of Justice and Consumer Protection confirmed that the German Government was ‘approached by the Constitutional Court on August the 23rd with the opportunity to submit its observations in this matter’. The UPC Preparatory Committee was not contacted by the Court and the EPO couldn’t immediately react on the matter. According to the German legal website JUVE, the German Bar Association DAV and the European Patent Lawyers Association EPLAW were approached by the Constitutional Court as well.



In the same article, based on information from ‘political circles’, JUVE reports that the mysterious plaintiff behind the German constitutional complaint, who has up to now remained anonymous, is Dr. Stjerna. His name has often been mentioned over the last months. He is a well-known critic of the Unitary Patent system and published a series of articles on his website, in which he brings up similar reasons for alleged violation of the German constitution as in the constitutional complaint.

Apparently, Stjerna declined to confirm to JUVE whether he is the plaintiff and declared: ‘The ratification of the UPCA is unconstitutional. Only the Federal Constitutional Court can stop this. I hope this will succeed, because otherwise the users will suffer, who urgently need a system that gives legal certainty (*ein rechtssicheres System*).’ Kluwer IP Law contacted Dr. Stjerna earlier this week as well, but questions whether he is behind the complaint have so far remained unanswered.

According to a report on Stjerna’s website, the Court’s request for comments ‘has no implications for whether the constitutional complaint will be accepted for a decision or for its prospects’. The spokesman of the Federal Ministry of Justice and Consumer Protection said the Ministry will react

within the next weeks to the request.

The decision of the Federal Constitutional Court is crucial for the future of the Unitary Patent system. German ratification of the UPCA – including the signature of the president and the deposit of the German instrument of ratification with the secretariat of the EU Council – is required before the Unified Patent Court and the Unitary Patent can start functioning. If the German Constitutional Court were to accept the complaint and were to decide the UPCA violates German law, this would make the starting date, if not the future of the system uncertain.

In Hungary, the compatibility of the UPCA with Hungarian law and ‘the appropriate mechanism that must be used for its ratification’ is under scrutiny as well. As is reported on [the website of Bristows](#), ‘the Hungarian Minister of Justice, acting on behalf of the government, filed a motion with the Constitutional Court of Hungary requesting the Court’s opinion (...). Contrary to the situation in Germany, the Hungarian parliament has not yet ratified the UPCA.

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