

Kluwer Patent Blog

EPLIT, BRAK, GRUR publish view on German complaint against ratification UPCA

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(UPDATES) The European Patent Litigators Association (EPLIT) is the latest of several organisations that have published their view on the constitutional complaint against ratification of the Unified Patent Court Agreement in Germany. The complaint was filed last year by European patent attorney Dr. Ingve Björn Stjerna. The Federal Constitutional Court in Germany requested a series of associations and institutions to submit their views concerning the case before the end of 2017.

The Deutscher Anwaltverein (DAV), a German Bar Association, was the first organisation to publish its comments on 10 January 2018. It said the complaint should be dismissed as inadmissible, or if admitted, should be deemed unfounded. (See [this report](#))

Earlier this week the official Bar Association, Bundesrechtsanwaltskammer (BRAK), published its findings as well ([here](#), German language). Just like the DAV, it concludes the complaint should be dismissed or otherwise be rejected.

The German Association for the Protection of Intellectual Property (GRUR) published its report [as well](#) (German language). The GRUR doesn't discuss the admissibility of Stjerna's claim: 'As an association with proven expertise in the field of intellectual property, we limit the present opinion to the specific questions of patent law and related issues'. It states the 'complainant's main concerns': the (in)compatibility of the UPCA with EU law, breach of the requirement for a qualified majority in parliament, lack of independence of the judges of the UPC and the 'impermissible blanket authorization with regard to procedural costs and their reimbursement'.

All complaints should be rejected, according to the GRUR report. Its conclusion stresses the importance of the Unitary Patent system: 'While the status quo is characterized by a coexistence of national patents and national shares of the European patent, each of which is subject to national jurisdiction with regard to infringement and legal validity, the future UPCA should provide a solution to decades of harmonization efforts in this field. It seeks to promote consistency of jurisprudence through a European Unified Patent Court, and to provide concerned parties with an instrument to make the enforcement of patent rights more effective and efficient, while protecting the rights of other parties and their options to defend themselves.'

Yesterday the European Patent Litigators Association (EPLIT) became the latest organisation to publish its comments, [here](#). According to a report on its website, 'EPLIT has worked with Dr

Bracher, a lawyer specialized in German constitutional law of the firm Redeker Sellner Dahs, to prepare a submission that has been filed with the Court on 22 December 2017. EPLIT has argued that the complaint should be dismissed.’ EPLIT is working on the English translation, which will be made available ‘in due course’, probably in about week.

According to a spokesman of the Federal Constitutional Court of Germany, seven institutions and associations submitted statements concerning the constitutional complaint, in reply to the request of the FCC: the German government, the EPO, BRAK, DAV, EPLIT, EPLAW and GRUR. In answer to a question by Kluwer IP Law about the court’s position about the publication of the opinions, the spokesman declared: “It’s not unusual that statements were published by the relevant institutions / associations. Generally they do not consult the Federal Constitutional Court before publishing their statements.”

UPDATES 28 and 29 January 2018: The EPLAW told Kluwer IP Law it will publish its opinion on the [EPLAW blog](#) shortly. The EPO and the German government will not publish their views.

Concerning a decision date the FCC couldn’t provide new information. ‘A date for decision has not been scheduled yet.’ As long as Germany hasn’t ratified the UPCA, the Unitary Patent system cannot launch.

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