

GERMAN BILLS IMPLEMENTING THE UPC CURRENTLY PUT ON HOLD BY GERMAN FEDERAL CONSTITUTIONAL COURT

Catching up with the latest development of the Unitary Patent Court ("UPC") system, the ratification process might have come to a preliminary halt in Germany. A pending constitutional complaint (the "Complaint") has been filed against the national bills ratifying the UPC agreement and implementing the UPC into German law ("UPC-law").

As a consequence, the German Federal Constitutional Court (the "Court") recently asked Germany's Federal President Frank-Walter Steinmeier not to sign the bills into law. As Germany's ratification is mandatory for the UPC system to come into force, the envisaged start of the UPC by the end of 2017 might likely be further postponed.

In our last update (January 2017) we explained that the timetable for the start of the period of provisional application and the entry into force of the UPC Agreement requires member states' ratification of the UPC Agreement and the participation in the Protocol on Provisional Application.

In Germany, a Complaint filed by an unnamed individual, questioning the constitutionality of the UPC-law, has been filed causing a stall to Germany's ratification. Generally, constitutional complaints like these are quickly dismissed, followed by a press release stating the reasons for dismissal, as their chances of being allowed for proceedings are generally quite low.

Therefore, the fact that the Court did not immediately dismiss the case suggests that the Complaint is not entirely unsubstantial and will require further review by the Court. However, instead of allowing the Complaint, which could stall the ratification process for months or even years, the Court took a more sensitive approach by informally involving the Federal President without issuing a formal decision.

With regard to the foundation of the Complaint itself, critical voices (including the former judge of the Court Mr Siegfried Broß) point out certain shortcomings of the UPC-law, that might render the Complaint's chances of success unpredictable. For example, it has been criticized that patent owners whose European patents get revoked by the board of appeal, which is not

considered an independent court, have no further legal remedy whereas opponents losing an opposition before the European Patent Office may still file an invalidation action to the responsible court. However, the details of the Complaint are still unclear as it has not been published.

The introduction of the UPC has been long awaited and an operational team is currently overseeing the final preparations for the recruitment of judges, testing IT and the case management systems. Thus, stalling the ratification process in Germany - especially after years of debate and uncertainty - was unexpected to say the least.

However, even if the Court allows the Complaint, proceedings will likely be accelerated to resolve the remaining obstacles for the timely implementation of the UPC system.

In any event, we will keep you posted!

Your Intellectual Property Team

CONTACTS



Dr. Claudia Milbradt
Partner, Düsseldorf

T +49 221 4355-5962
E claudia.milbradt
@cliffordchance.com



Nicolas Hohn-Hein
Associate, Düsseldorf

T +49 221 4355-5664
E nicolas.hohn-hein
@cliffordchance.com

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www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street,
London, E14 5JJ

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