



Munich, 14th June 2017

Further delays in launching the UPC (Unified Patent Court)?

According to press reports, an as yet unnamed individual filed a constitutional complaint with the Federal Constitutional Court at the end of March against the UPC Agreement and German legislation implementing the Agreement, and also filed an application for a temporary injunction (File No. 2 BvR 739/17).

The Federal Constitutional Court duly requested the Federal President to hold off signing the UPC legislation until a decision is reached on the constitutional complaint. This has meanwhile been confirmed by both the Federal Constitutional Court and the Office of the Federal President.

—

The ratification process in Germany has thus been halted at the proverbial last minute. While at the moment it is difficult to predict how much time the court will need to consider the complaint, it has to be assumed that it will take at least several months. In view of the still open question whether and when Great Britain ratifies the UPC, it is possible that the delay resulting from the Federal Constitutional Court's request to the President will be inconsequential. In a not dissimilar case, a request from the Federal Constitutional Court to the Federal President to withhold his signature on legislation relating to the European rescue package resulted in a delay of a mere six months.

The basis of the constitutional complaint is still not known, although it is thought that there may be a connection between it and four other constitutional complaints that are currently pending and which relate to the structures in the European Patent Office. A patent with unitary effect would also be granted by the European Patent Office, so that the outcome of the constitutional complaints against the European Patent Office could also be of relevance for the proposed new European patent with unitary effect. The constitutional complaints against the European Patent Office criticize the fact that the European Patent Office does not have an independent appeal body, since the Appeal Boards do not enjoy autonomy from the European Patent Office. This speculation about the reasons for the constitutional complaint against the UPC is supported by the fact that the rapporteur for the constitutional complaint against the UPC as well as the constitutional complaints against the European Patent Office appears to be Prof. Dr. Peter Huber. A decision on the constitutional complaints against the European Patent Office is expected before the end of the year.

It is of course conceivable that the constitutional court will very quickly come to the conclusion that the constitutional complaint against the UPC is unfounded, so that for the moment it is not possible to predict with any accuracy when the UPC will get off the ground.

—

If you would like to have more information on the unitary patent and the UPC, Dr. Sophie Ertl or Thomas Mayer at Maiwald will be very happy to assist you.

Munich

Elisenhof, Eisenstraße 3
D-80335 Munich
T: +49 (0)89 747 266 0
F: +49 (0)89 776 424
info@maiwald.eu

Dusseldorf

Grünstraße 22-24
D-40212 Dusseldorf
T: +49 (0)211 301 257 0
F: +49 (0)211 301 257 11
mail@maiwald.eu