

20 MARCH 2020 – ACCORDING TO THE CONSTITUTIONAL COURT, THE GERMAN RATIFICATION OF THE UPC IS VOID

On March 20, the German constitutional Court decided that the ratification process of the UPC agreement in Germany had not been made correctly and was therefore void.

According to the constitutional Court namely, the ratification law was not voted with a majority of 2/3 of the deputies, which was required in the present case, since the UPC would replace the existing German Courts in European patent matters.

Since this is the only ground of the decision of the constitutional Court, it may be possible to again submit the ratification law to the German parliament with the hope that the required majority would be obtained.

Nevertheless, this decision will automatically slow down the entire ratification process and further delay a possible entry into force of the UPC and the Unitary patent.

In the meantime in the UK, following Brexit, the UK government has announced at the end of February that:

« the UK will not be seeking involvement in the UP/UPC system. Participating in a court that applies EU law and bound by the CJEU is inconsistent with our aims of becoming an independent self-governing nation »

This seems to indicate that the UPC agreement would have to be amended to take the Brexit into account. Also, the UPC, if it comes into force, would not have jurisdiction on the British territory. Infringement of a European patent designating UK would have to be sued before UK national Courts. This would be highly regrettable in view of the particularly complex and expensive british court procedure.

In addition, the Unitary patent would not cover the British territory.

Nevertheless, this announcement may not be the final decision of the UK. At present, all EU Directives and Regulations are still applicable in the UK notwithstanding the Brexit. Discussions on the future relation between the UK and the EU are pending, but may be slowed down by the Covid-19 epidemia. It is necessary to wait for the final issue of those discussions to know the definitive position that the UK will adopt in the specific matter of the UPC agreement.

In conclusion:

The possible entry into force of the UPC agreement will now be delayed for an unforeseeable time period. Even if a new ratification process in Germany is successful after some months, the present negative position of the UK, if it is confirmed and the UK is not part of the UPC agreement, will necessitate several amendments of the agreement as it stands now.

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The change of location of the London section of the central division will lead to difficult political discussions between the Member states.

We will not fail to keep you informed of any further development.



Contact us:

For any question you may have, please do not hesitate to contact our team.



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