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UPC: Düsseldorf Lawyer Stjerna lodged complaint under Constitutional Law

There has been speculation for a long time regarding who initiated the proceedings at the end of March before the Federal Constitutional Court against the UPC agreement. JUVE has now learned from sources in the political world that the complainant is Düsseldorf lawyer Dr. Ingve Stjerna.



Ingve Stjerna

At the end of August the Federal Constitutional Court called on a number of the people involved as well as third parties to give their views. These included, as well as the Federal Government, also the Deutscher Anwaltverein (DAV, the German Law Society), and Eplaw, the European Patent Lawyers Association. Both bodies of lawyers played a considerable part in the process of bringing the UPC into being.

When approached by JUVE, Stjerna had this to say: “The concession to the EPC arrangement is unconstitutional, and only the Federal Constitutional Court can put a stop to it. I hope this succeeds, because otherwise it will be the users in particular who suffer. They need a more legally secure system, and they need it urgently.”

It was only in mid-August that the grounds for the complaint were made public for the first time. Stjerna is contending that, with the UPC agreement, the Federal Republic is surrendering more sovereign rights than is compatible with the need for democracy (Art. 38 Para. 1 Clause 1 of the Basic Law (GG)). In detail, he is complaining, among other issues, that the Bundestag passed the ratification laws by a simple majority. Stjerna maintains, however, that a two-thirds majority is needed. He also insists that the UPC agreement is not compatible with European law.

The question of the voting procedure in the Bundestag is regarded by UPC backers as of little consequence, because in March the Bundestag political fractions passed the UPC laws unanimously. Conversely, Karlsruhe could have called on the European High Court with regard to compatibility with Union law. In this case, there is a threat that there will be a considerable delay to the start of the UPC.

What is still unclear, however, is whether the Federal constitutional judges will allow the complaint at all. The wide range of opinions being gathered is a sign to the experts that the judges in Karlsruhe are looking at Stjerna’s complaint very intensely, and will allow it. As far as anyone knows, the judges are setting a very tight deadline on their reaction, such that an

initial decision about approval is still possible this year. If the complaints are rejected, then the UPC could potentially get going next year – provided that Great Britain ratifies the UPC agreement this autumn.

Speculations proved right

Over the past few months there has repeatedly been speculation that the person behind the complaint was Stjerna, not least due to the publications by the UPC-sceptical lawyer from Düsseldorf. As early as July he had been posting detailed documents on his Website, among them minutes of meetings and questions put to the political fractions in Bundestag regarding the way they voted.

And as far back as 2012, in an interview with JUVE, he was criticising the political decision-making process with regard to the EU Patent and the new Patent Court had not been handled transparently enough for the public on a European level. He had repeatedly complained about the undemocratic behaviour by the legislature, and so developed into the main critic of the UPC altogether, even though at the time he had been working for the very UPC-friendly law firm of Simmons & Simmons. Before that he was with the patent legal practices of Bird & Bird and Reimann Osterrieth Köhler Haft (now Hoyng ROKH Monegier) in Düsseldorf.

Today Stjerna works as an independent attorney in Düsseldorf. Among colleagues, who recommend him as an experienced expert in the patent field, he also finds fellow-feeling and praise for his critical stand. “He’s putting his finger right on the spot, and he’s saying what a lot of people wouldn’t dare to say, bearing in mind the people they have as clients”, says one Munich patent attorney, for example. With regard to the new Patent Court, the German patent scene is regarded as split. For a long time, not all the attorneys have been fans of the UPC.

Hungary raising the issue too

In the meantime it has also become known that the Hungarian government has also called upon the constitutional court in Budapest for an expert opinion as to whether the UPC laws are compatible with the Hungarian constitution. This could delay the integration of the agreement into national law. This would have no effect on the start of the UPC, however, because in order to be binding it would only need France, Germany, and Great Britain to ratify the agreement. Ten other EU states are needed. In total, 14 states have already concurred with the agreement.

As soon as Germany and Great Britain have ratified the UPC agreement, the court can get going. The UPC should actually already have started in April, and a European-wide Patent Court should have been established, with a uniform protective right, the EU Patent. But Brexit, and then the constitutional complaint in March, have delayed the launch indefinitely.
(Mathieu Klos, Christina Schulze)