

Germany says 'halt' to unitary patent and UPC. National sovereignty over patents, first.

Milan, 24 March 2020 - The German Constitutional Court has declared that the act of ratification of the Agreement on the Unified Patent Court (UPC) by the German Parliament is null and void. This certainly represent a major drawback if not even a lethal blow for the whole system of a European Patent having unitary effect. The German Court has affirmed that the UPC system somehow would have amended the German Constitution in substantive terms, therefore its implementation should have been approved by the Bundestag with a required special two-thirds majority. Some commentators have already observed that this could represent a postponement of the implementation of the whole expected European system of at least 5 years if not the end of it.

In this context we may observe that, also following the recent reported decision of the UK not to join the UPC system following Brexit, many Italian (and also a few foreign) commentators and insiders were recently claiming that Italy might have hosted the central division of the UPC in Milan having jurisdiction on Life Sciences matters. Italy has a longstanding and well-reputed tradition in the field of chemicals and pharmaceutical and the assignment of the relevant central division could have somehow indemnified our country for the loss of the opportunity to host the European Medicines Agency (EMA), that was instead assigned to Amsterdam following a very much debated procedure. It appears that this won't be the case and that this occasion of growth for Italy, as well as of harmonization and unification of Europe has been lost.

All this means that it will be on the Italian patent community (meaning lawyers, Judges and patent attorneys) to demonstrate once again to the international audience the strength and value of our legal system. Intellectual property and patents (especially the almost 50 years old - and still working - European 'non-unitary' Patent system) in particular will in fact continue to be a vital part of the European and Italian economy in the very near future. Patents will be at the center of many commercial and even political moves of entire economic conglomerates in the next years, as also these very special days are

demonstrating.

In this regard we have observed in recent years an insufficient participation of Italian community of professionals to international works aimed at uniforming the legal system related to patents in Europe (unsurprisingly Italy had indeed joined the works on the UPC system at a later stage, having even brought a challenge in front of the ECJ at the beginning). Consequently, we believe that the overall quality of the Italian judicial system and of the national professionals specialized in intellectual property law is not sufficiently known to the international audience. The specialized lawyers who have always practiced in Italy shall instead have a pivotal function, especially in navigating the difficult waters of the Covid-19 aftermath.

What will be of fundamental importance is that the Italian government maintains the specialized sections in intellectual property (possibly even reducing them to an even more reduced number of very specialized ones) and continue to train specialized judges. We as lawyers will have the duty to keep providing the best assistance and training us to meet the next years' challenges. But what's more important than ever is that the international community of European patent practitioners keep a cooperative attitude among them.

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