

Recent Case Law in German Patent Law



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FOREWORD

Dear reader,

After a long wait, 1 June 2023 finally marked the green light for the Unitary Patent System and thus for a new era of jurisdiction by the instances of the Unified Patent Court (UPC). The UPC is the first international court in the world to have jurisdiction over all participating states with regard to questions of infringement and legal validity of both Unitary Patents (UPs) and non-opted-out European Patents (EPs).

We are therefore particularly delighted to be able to report to you – for the first time in this year's case law review – on the initial orders and decisions of the UPC at first and second instance, which after only a few months already enrich and expand the case law relating to German patent law.

In particular, the early phase of the UPC was eagerly awaited, as it will be decisive for the development of a standardised judicial practice of this new court. After just a few months, it is already apparent that the UPC does indeed fulfil the requirement of being an extremely fast ("rocket-docket") and highly qualified court. This makes the UPC an exciting forum for plaintiffs from all over the world who wish to obtain titles based on a UP or EP. As is well known, the UPC's rules of procedure bear the hallmarks of all participating member states and thus represent a novelty of a multinational procedural system that, due to its history, has roots not only in continental European and Roman law, but also in Anglo-American (common) law. It will be especially interesting to monitor the new opportunities and risks offered by the new court system for those standards and procedures of the UPC Rules

of Procedure that were previously unfamiliar to our German procedural law.

Even though the number of cases pending before the UPC is steadily increasing, the German civil courts continue to be responsible for the vast majority of relevant decisions relating to German patent law. In matters of interpretation, patent infringement and questions of legal validity and in various questions of formal and substantive law, the case law of the German courts of lower instances and ultimately the Federal Court of Justice (BGH) continue to provide valuable guidance in practice. Interestingly, a progressing harmonisation of German case law and the practice of the (Enlarged) Board(s) of Appeal of the European Patent Office can be observed, which is to be welcomed in terms of legal certainty.

Finally, we are also able to present two topics in this edition of our case law review that remain within the sphere of the German courts, namely the cases concerning the Employee Invention Act, as well as one rare decision by the Federal Patent Court on plant variety protection.

Against this background, we are pleased to once again present a wide range of selected decisions on German patent law, commented on herein below by our experts at Eisenführ Speiser.

We wish you an enjoyable read!

Dipl. Biol. Dr. rer. nat. Christine Cirl, LL.M. on behalf of the authors

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