

**[Office translation of the original German language document]**

**By fax in advance to 030 - 227 - 56552**

Parliamentary Group Bündnis 90/Die Grünen  
Platz der Republik 1  
11011 Berlin

Düsseldorf, 09/11/2020

**Ratification of the Agreement on a Unified Patent Court – Possibility of a request for judicial review [“abstraktes Normenkontrollverfahren”] re compatibility with the Grundgesetz**

Dear Madams and Sirs,

In my letter of 21/09/2020, I had drawn the attention of your Parliamentary group to the numerous economic and legal problems of the Agreement on a Unified Patent Court (“UPCA”), the ratification of which is currently being pursued by the Federal government (see Parliament printed matter 19/22847 of 25/09/2020). The FDP Parliamentary group has submitted several of the questions raised in this letter to the Federal government for answer by way of a minor interpellation (cf. Parliament printed matter 19/23651 of 27/10/2020).

The first attempt to ratify the UPCA in 2017 was declared null and void by the Federal Constitutional Court [“BVerfG”] in March 2020, in response to my constitutional complaint of 31/03/2017 (case No. 2 BvR 739/17, decision of 13/02/2020). The court upheld the constitutional complaint on the grounds of a violation of the qualified majority requirement under Art. 23 (1)3 in conjunction with Art. 79 (2) GG, so that it did not need to address the further substantive constitutional violations also complained of. As mentioned in para. 6 of my above-mentioned letter, these objections remain valid for the new ratification attempt and could be asserted with a renewed constitutional complaint against a possibly adopted UPCA Ratification Act. In its aforementioned decision, the BVerfG also indicated further constitutional deficits of the UPCA. The adoption of the UPCA requires a qualified majority in the Bundestag and Bundesrat.

The question arises whether, in order to clarify the unchanged constitutional issues as promptly as possible, it might not be expedient for the German Bundestag to refer the matter to the BVerfG for assessing whether ratifying the UPCA is compatible with the Grundgesetz by way of a request for judicial review [“abstraktes Normenkontrollverfahren”] pursuant to Art. 93 (1) No. 2 GG, sec.s 13 No. 6, 76 et seq. of the Act on the BVerfG. This would require the



support of a quarter of the Members of the Bundestag. As is well known, in case of a Ratification Act for an international Agreement – such as the UPCA – the admissibility of such request does not require the conclusion of the legislative procedure and the promulgation of the legislation in question, but only that the participation of the legislative bodies is complete (cf. BVerfGE 1, 396 (410)).

It is suggested to assess whether the initiation of such a procedure by the German Bundestag might be of interest.

With kind regards

**Dr. Ingve Björn Stjerna**  
Rechtsanwalt  
Fachanwalt für gewerblichen Rechtsschutz