Dr Ingve Björn Stjerna

Paul-Pieper-Straße 18
40625 Düsseldorf
[redacted]
post@stjerna.de

Chamber of Patent Attorneys
Patent Attorney
Dr Brigitte Böhm
Tal 29
80331 Munich

Düsseldorf, 2 October 2014

In advance by e-mail to bboehm@[redacted] and dpak@patentanwalt.de,
cc: Dr Malte Köllner (by e-mail to koellner@[redacted])

**Legislative initiative "unitary patent" and court system –
Handling of critical articles by "Mitteilungen der deutschen Patentanwälte"**

Dear Dr Böhm,

I am contacting you in your capacity as President of the Chamber of Patent Attorneys and with regard to the publication of [the journal] "Mitteilungen der deutschen Patentanwälte" (afterwards "Mitteilungen") by the Board of the Chamber, over which you preside. The background is the handling of critical articles on the legislative project of the "unitary patent" and the related court system (afterwards "unitary patent package") by "Mitteilungen", which I intend to address in an article in the near future.

**I.**

1. As you might know, I have been following said legislative project for some time now and, starting in 2010, I have repeatedly offered or submitted articles on this topic to "Mitteilungen", namely:

   – on 24 August 2010, a proposed article on the Advocate General's Statement of Position in the CJEU proceedings on opinion 1/09,

- on 24 March 2011, the article “The opinion 1/09 of the CJEU - Planned EU patent court system is incompatible with EU law”,
- on 1 June 2011, a proposed article on the position of the European Commission as regards the next steps after opinion 1/09,
- on 2 January 2013, the article “The deliberations on the “unitary patent” and the related court system - On the way to disaster”,
- on 12 March 2014, the two articles “The sub-sub-suboptimal compromise of the EU Parliament” and “Law-making in camera”, and recently,
- on 28 August 2014, the article “The oral hearing on Spain’s actions at the CJEU”.

Accepted for publication and printed were only the article submitted on 24 March 2011 (published in Mitt 2011, 213 ff.) and the one submitted on 2 January 2013 (published in Mitt 2012, 54 ff.). A publication of the other mentioned articles was refused or, as to the two suggested articles, it was indicated that there was no interest in a publication.

2. As a reason for the rejection of the articles, the editorial office repeatedly told me that “Mitteilungen” would usually not report on ongoing legislative processes, but only on the “final law”, because “*Otherwise, it might cause confusion to the readers”.* As a reason for the rejection of the two articles submitted on 12 March 2014 I was told that the legislative procedure underlying the “unitary patent package” had indeed *“gone badly”,* but that now, there was a primary interest in articles on how to cope with the compromise solution found. As the reason for the rejection of my recent article on the oral hearing on Spain’s nullity actions against the two European regulations on the “unitary patent” before the CJEU, I was told that “Mitteilungen” would, in general, not report on ongoing court proceedings, since one did not want to provide to the readers information that might later on turn out to be incorrect. There would be a “general policy” of the editorial office and the publishers *“not to publish about ongoing proceedings and legislation, as far as possible”*. Exceptions to this principle would rarely be made.

**II.**

3. As mentioned at the beginning, I intend to discuss the mentioned experiences in an article and I would hereby like to give the publishers of “Mitteilungen” the opportunity to comment on the described events. In particular, I would be interested in their position on the following questions:

   (1) The articles I submitted or or suggested were repeatedly rejected with the explanation that there was a “general policy” at “Mitteilungen” to “usually” not report on ongoing legislative or court proceedings. Do the publishers not think that the readers of “Mitteilungen” have a legitimate interest in being informed about all circumstances and developments that are relevant for their professional activities in a comprehensive and unbiased manner? Would the relevance of the “unitary patent package” for the professional activities of many readers not only justify, but actually require a deviation from said principle?

   (2) What is to be understood by a “confusion of the readers” which – as the editorial office repeatedly indicated to me – was to be avoided? Do you not think that a selection of contents being performed on such basis amounts to patronizing of the readers, apart from of the arbitrariness of such criterion?

   (3) My impression is that articles adopting a critical position on the topic of the “unitary patent package” are no longer published in “Mitteilungen” for that reason alone and regardless of their substantial validity at least since the beginning of 2012, when my article was published in Mitt 2012, 54 ff. What is the reason for that?

   (4) Diversity of opinions is a basic element of a democratic political system. Do the publishers not think that a diversity of opinions should be cultivated also and in particular in publications such as “Mitteilungen”? Should this not include providing room to critical voices as to enable the readers to form their own opinion, especially in relation to competing attitudes?

I would be glad if you could let me know the publisher's position on the handling of critical articles in relation to the "unitary patent package" by "Mitteilungen" and in particular on the aspects raised in the above questions, so that it can be duly taken into account in my publication.

With kind regards

Dr Ingve Stjerna

Patentanwaltskammer
Körperschaft des öffentlichen Rechts

Abteilung IV des Vorstands

Herrn Rechtsanwalt
Dr. Ingve Björn Stjerna, LL.M.
Paul-Pieper-Straße 18
40625 Düsseldorf

| Ihr Zeichen | Unser Zeichen | Datum |
|---|---|---|
| | N/43 | 13.10.2014 |

**Publication in Mitteilungen**

Dear Dr Stjerna,

For reasons of competence, President Dr Böhm has referred your letter of 2 October 2014 to me. We have followed with interest your different articles on the "unitary patent" and the court system which you kindly sent to us and have, as you mentioned yourself, published two of the articles in Mitteilungen.

However, as we have informed you already, the focus of publication in "Mitteilungen" is on decisions and articles dealing with current case law and the present legal situation. As the publisher of "Mitteilungen", the Board considers the main task to be the information, in particular of the patent attorneys, about circumstances which can be relevant for their professional activities as well as for the exchange of opinions on such topics.

Please understand that we did not publish in “Mitteilungen” all the six articles you submitted, since we also wanted to give other authors the opportunity for publication and since “Mitteilungen”, which address the legal practitioner, have other priorities.

In you have any queries, please do not hesitate to contact us.

With kind regards

Prof. Dr Dr Uwe Fitzner
Chairman

Dr Ingve Björn Stjerna

Paul-Pieper-Straße 18
40625 Düsseldorf
[redacted]
post@stjerna.de

Chamber of Patent Attorneys
Board Division IV
Patent Attorney
Prof. Dr Dr Uwe Fitzner
Tal 29
80331 Munich

Düsseldorf, 17 October 2014

In advance by e-mail to bboehm@[redacted] and dpak@patentanwalt.de,
cc: Dr Malte Köllner (by e-mail to koellner@[redacted])

**Legislative initiative "unitary patent" and court system –
Handling of critical articles by "Mitteilungen der deutschen Patentanwälte",
your letter of 13 October 2014**

Dear Prof. Fitzner,

Thank you very much for your letter of 13 October 2014. In it, you informed me that the issues raised in my letter of 2 October 2014 fell within the competence of the Board which is your responsibility, which is why it was forwarded to you to be answered.

4. The content of your answer is surprising. Without going into the aspects I explained, in particular the questions raised, you inform me that "Mitteilungen" published primarily decisions as well as articles dealing with current case law and the *"present legal situation"*. The publishers would see as the main purpose of "Mitteilungen" the information, in particular of the patent attorneys, about circumstances might have relevance for their professional practice and the respective exchange of opinions. It would not have been possible to accept all of the articles referred to in my said letter for publication as you also wanted to give *"other authors the opportunity for publication"*, apart from the fact that "Mitteilungen", due to its practice orientation, had *"other priorities"*.

5. When reading through my letter of 2 October 2014, it can easily be seen that the articles or proposals for articles I submitted merely form the background for my request, so that the question whether all of these articles were accepted for publication or not is of secondary importance. As explained, the main focus is rather on the reasons put forward by the editorial office for the rejected publication, the self-conception expressed by this and lastly, the underlying motivation as to why, since the beginning of 2012, “Mitteilungen” has refused to inform its readers about a series of problematic aspects which have surfaced in relation to the “unitary patent package”.

6. If my interpretation of the explanations in your letter of 13 October 2014 is correct, you seem to think that the mentioned problems – to use your own words – cannot “be relevant” for the professional activities of the readers of “Mitteilungen” which is why you consider the suggestion of a related exchange of opinions by respective publications to be generally dispensable. Is this understanding of your statements correct?

Should I have misunderstood your statements, I would be grateful for a corresponding correction. Further, I again refer to the questions raised in my letter of 2 October 2014 which your answer ignored, leaving it to your discretion to provide a statement on them.

With kind regards

Dr Ingve Stjerna