

WITTEWELLER NEWS III/2022

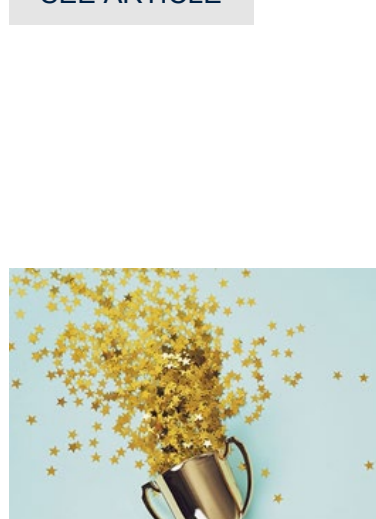
## Client Information and News

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## Update UPC I – Start of Sunrise Period on 1 March 2023

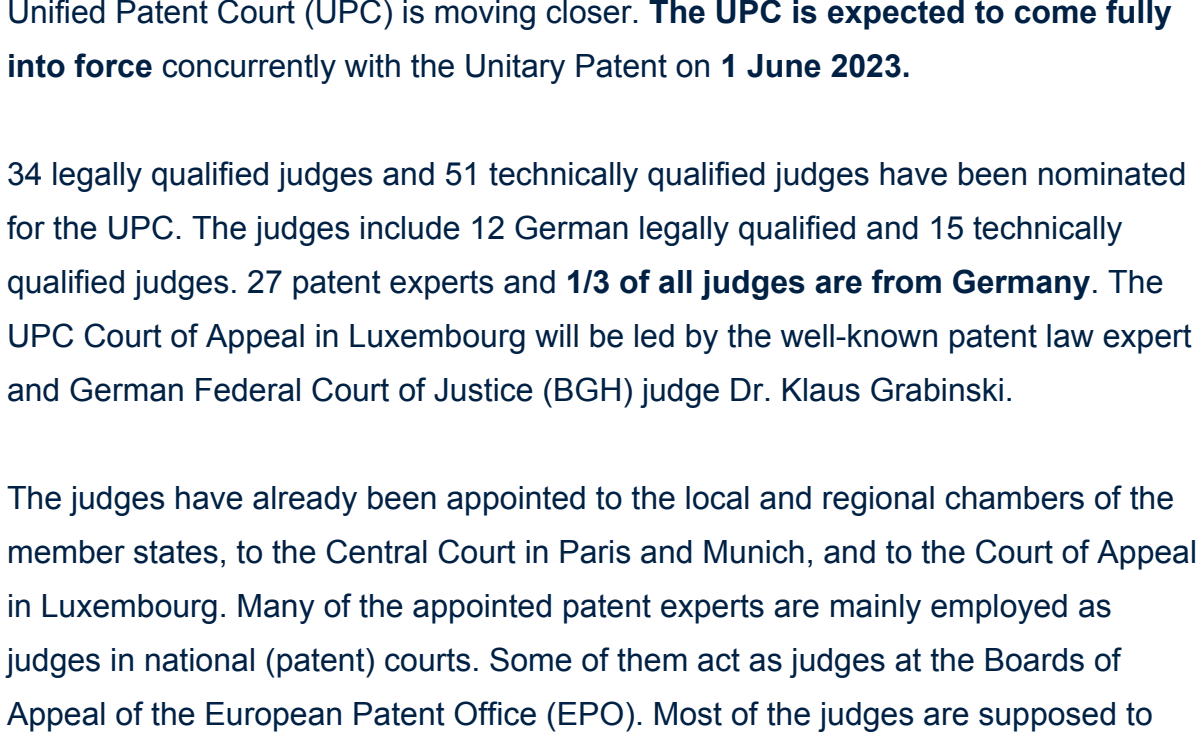
The Unified Patent Court (UPC) announced on 5 December 2022 that the **start of the Unitary Patent will be delayed**. The so-called Sunrise Period, during which granted EP patents and European patent applications can be withdrawn from the Court's responsibility, is postponed for two months and will start on 1 March 2023. The **Unified Patent Court is expected to enter into force on 1 June 2023**.

The delay is obviously intended to provide additional time as many users allegedly have not yet been equipped with the electronic signatures required to access the UPC's system. We at WITTEWELLER have already been prepared and are ready to go!

### Further information

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## 2. Update UPC II – Judges appointed

On 19 October 2022, the Unified Patent Court (UPC) confirmed the appointment of 85 judges. Therefore, the launch of the European Unitary Patent (UP) and the Unified Patent Court (UPC) is moving closer. **The UPC is expected to come fully into force** concurrently with the Unitary Patent on **1 June 2023**.

34 legally qualified judges and 51 technically qualified judges have been nominated for the UPC. The judges include 12 German legally qualified and 15 technically qualified judges. 27 patent experts and **1/3 of all judges are from Germany**. The UPC Court of Appeal in Luxembourg will be led by the well-known patent law expert and German Federal Court of Justice (BGH) judge Dr. Klaus Grabinski.

The judges have already been appointed to the local and regional chambers of the member states, to the Central Court in Paris and Munich, and to the Court of Appeal in Luxembourg. Many of the appointed patent experts are mainly employed as judges in national (patent) courts. Some of them act as judges at the Boards of Appeal of the European Patent Office (EPO). Most of the judges are supposed to work part-time. The working hours, however, would be increased depending on the number of UPC cases.

An overview of German judges may be found [here](#).

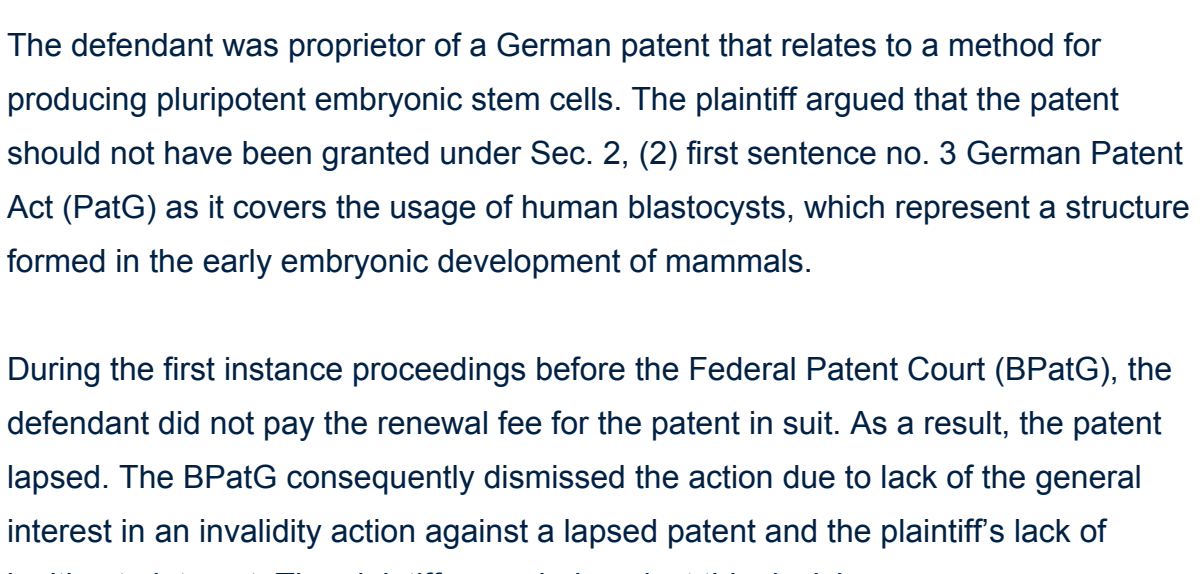
An overview of all UPC judges may be found [here](#).

Further information on the UP and the UPC you may find on our [website](#).

### Further information

[JUVE PATENT](#)

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## Federal Court of Justice Judgment – On the question about the admissibility of a nullity action after lapse of patent

In its decision of 21 July 2022 (Az. X ZR 110/21) the Federal Court of Justice (BGH) ruled that a **lapsed patent** can **only** be challenged by a nullity action in case of an **own legitimate interest**.

The defendant was proprietor of a German patent that relates to a method for producing pluripotent embryonic stem cells. The plaintiff argued that the patent should not have been granted under Sec. 2, (2) first sentence no. 3 German Patent Act (PatG) as it covers the usage of human blastocysts, which represent a structure formed in the early embryonic development of mammals.

During the first instance proceedings before the Federal Patent Court (BPatG), the defendant did not pay the renewal fee for the patent in suit. As a result, the patent lapsed. The BPatG consequently dismissed the action due to lack of the general interest in an invalidity action against a lapsed patent and the plaintiff's lack of legitimate interest. The plaintiff appealed against this decision.

The appeal was not successful. The BGH confirmed the BPatG's decision.

According to established case law, the Federal Court of Justice (BGH) confirmed that there is no public interest for invalidity if a patent has lapsed. The BGH further emphasizes that the invalidity action is constituted as a popular action and, therefore, could be filed by any person. It is argued that it is of public interest that patents which are unjustifiably granted patents should be eliminated. In case of a popular action, the plaintiff does generally not need to prove any legitimate interest. This, however, applies in case of invalidity action only if the patent is still pending.

**If a patent has lapsed**, as in the present case, an **invalidity action is only possible if the plaintiff is able to justify its own legitimate interest**. In the present case, the plaintiff had not claimed that own rights were affected but referred to the public interest in the BGH's general practice according to law. The BGH considered the argumentation as insufficient. The granting of the lapsed patent would not have any legal effect on the plaintiff. Therefore, the BGH rejected the plaintiff's request for legal protection.

### Further information

[BGH PRESS RELEASE \(GERMAN\)](#)

[BGH DECISION \(GERMAN\)](#)

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## Office News

### EPO Transitional measures start on 1 January 2023

In connection with the recently published deadlines for the launch of the Unified Patent Court (UPC), the European Patent Office has set a date for transitional measures. As of **1 January 2023**, patent applicants will be able to file a **request for unitary effect** or to file a **request for a delay in issuing the decision to grant a European patent**. These transitional measures will be available until the unitary patent system will enter into force, probably on 1 June 2023.

These measures are intended to support patent proprietors in an uncomplicated uptake of the Unitary Patent.

Further information may be found [here](#).

Further information about UP and UPC may be found on our [website](#).

### Further information

[EPO NEWS](#)

### EPO videoconferencing - Future format of Oral Proceedings in Opposition Procedures

Videoconferencing is supposed to become standard practice in opposition procedures before the EPO from 1 January 2023. In reaction to the positive feedback from various participants in the pilot project for oral proceedings in oppositions, the EPO decided to adopt videoconferencing as the standard format. Only under certain circumstances, and provided the opposition division agrees, oral proceedings in oppositions will be conducted in person.

### Further information

[EPO NEWS](#)

### Montenegro - Accession to the EPC

Montenegro joined the European Patent Convention (EPC) on 1 October 2022. The EPC will include the designation of Montenegro relating to EP patent applications filed on or after this date.

Also, nationals and residents of Montenegro can file international applications with the European Patent Office (EPO) as from 1 October 2022.

### Further information

[EPO OFFICIAL JOURNAL](#)

### Global Innovation Index 2022 - Germany climbs to 8th position

According to the [Global Innovation Index \(GII\) 2022](#) study launched by the World Intellectual Property Organization (WIPO), Germany has moved up two places, now ranking at place 8 and has thus continued to strengthen its position among the TOP 10.

In terms of the three innovation indicators patent applications, logistics and size of its domestic market, Germany ranks as world leader. Regarding companies' investments, research and development, Germany takes the 2nd place. It ranks 3rd in terms of impact of scientific publications and the variety of complex export goods.

Germany also performs well in the category "science & technology clusters" comprising the individual economic and technology regions in 2022. Germany hosts 10 of the top 100 regions in Germany. Cologne (23rd), Munich (24th) and Stuttgart (28th) (WITTEWELLER location) are the top three regions.

According to the study, Germany's innovation system is particularly efficient. While the country is ranking only on place 12 in terms of investments (inputs), it takes place 7 in terms of returns (outputs).

The Global Innovation Index (GII) launched by the WIPO monitors the innovation performance of 132 economies comprising 80 indicators. As in the previous years, Switzerland ranks 1st, followed by the United States and Sweden. The United Kingdom takes 4th place followed by the Netherlands. The Republic of Korea ranks 6th and Singapore 7th place. Finland ranks 9th and Denmark 10th. China follows the TOP 10 moving up to 11th place.

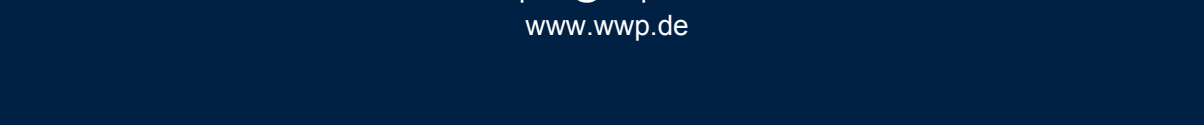
### Further information

[GPTO PRESS RELEASE](#)

[WIPO NEWS](#)

[WIPO GLOBAL INNOVATION INDEX 2022 \(REPORT\)](#)

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## Awards for WITTEWELLER in 2022

We are pleased to announce that in 2022, WITTEWELLER received again several awards for outstanding achievements in the field of patent law and industrial property rights.

Once again, the business magazine **Handelsblatt** awarded WITTEWELLER as **Germany's BEST Lawyers** in the field of industrial property rights. Handelsblatt particularly recognizes the expertise and work of patent attorneys Dr. Volker Heuckeroth, Stephan Keck and Mark Wegener.

Furthermore, WITTEWELLER was listed by **JUVE** as one of the leading patent law firms in the category [Patent Filing—Germany 2022](#).

Christian Steil, Dr. Volker Heuckeroth and Stephan Keck are particularly mentioned as being highly recommended. JUVE further recognizes WITTEWELLER's special expertise in the field of pharma and biotechnology, medical technology, electronics, mechanics as well as process and mechanical engineering.

The global business magazine **Financial Times** lists WITTEWELLER as one of [Europe's Leading Patent Law Firms 2022](#).

The news magazine **FOCUS** recommends WITTEWELLER, as it did in 2021, in its annual [ranking](#) in the category patent law as one of Germany's leading corporate law firms. We are particularly pleased that our firm was once again highly recommended by our clients.

We highly appreciate these awards and consider them as confirmation and motivation to continue to provide our clients with top quality.

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Responsible according to German press law: Mark Wegener, Patentanwalt

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