

Annual Report 2021

Federal Patent Court

Executive Summary

In the reporting year, the number of incoming cases rose to 27 compared with the previous year (22 in the previous year). The number of ordinary proceedings was stable (18, previous year 18), while the number of summary proceedings increased (9, previous year 4).

Of the 17 ordinary proceedings handled by the Court, 7 ended by settlement and 8 were adjudicated. Two cases were dismissed for irrelevance. Of the five summary proceedings handled in the reporting year, two were adjudicated and three were dismissed for irrelevance. The number of cases pending at end of the year was slightly higher (30, compared with 25 the previous year).

Income at CHF 895,256 was significantly higher than the prior year (CHF 796,605) which reflects the larger number of cases handled. Despite higher costs of CHF 1,608,466 (previous year, CHF 1,566,306) stemming from a case where legal aid was granted, the deficit declined. The cost-coverage rate attained 56% (previous year 51%).

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Annual Report of the Federal Patent Court 2021

St. Gallen, 1 February 2022

Mrs President

Distinguished members of the National Council and the Council of States

In keeping with Article 3 paragraph 3 of the Patent Court Act (PatCA), we hereby submit the present Annual Report covering our activities in 2021.

Please accept, Mrs President and distinguished members of the National Council and the Council of States, the assurances of our highest consideration.

On behalf of the Federal Patent Court

President:

Mark Schweizer

First Court Clerk:

Susanne Anderhalden

Members of the court

Administrative Committee

President:	Mark Schweizer
Second permanent judge:	Tobias Bremi
Vice-President:	Frank Schnyder

Non-permanent judges with technical training

Natalia Clerc
Roland Dux
Giovanni Gervasio
Barbara Herren
Michael Kaufmann
Alfred Koepf
Christoph Müller
Markus A. Müller
Lorenzo Parrini
Peter Rigling
André Roland
Werner A. Roshardt
Regula Rüedi
Philipp Rüfenacht
Christophe Saam
Frank Schager
Frank Schnyder
Andreas Schöllhorn Savary
Martin Sperrle
Hannes Spillmann
Kurt Stocker
Michael Störzbach
Kurt Sutter
Daniel Vogel
Prisca von Ballmoos
Diego Vergani
André Werner
Marco Zardi

Non-permanent judges with legal training

Daniel M. Alder
Lara Dorigo
Philippe Ducor
Christoph Gasser
Andri Hess
Christian Hilti
Simon Holzer
Stefan Kohler
Daniel Kraus
Thomas Legler
Rudolf Rentsch
Ralph Schlosser
Christoph Willi

Caseload

At the end of 2021, 25 ordinary proceedings and 5 summary proceedings were pending before the Federal Patent Court (previous year 24 and 1 respectively).

The total number of incoming cases reached 27 compared with 22 the prior year. There was the same number of ordinary proceedings (18), but a higher number of summary proceedings (9 compared with 4 the previous year).

The Court heard 17 ordinary proceedings (previous year 14), of which 7 were settled (previous year, 2), 2 were dismissed as irrelevant (previous year, 4), and 8 were adjudicated (previous year, 7); no cases were found inadmissible (previous year, 1). The Administrative Committee decided on one request for recusal. Overall, five substantive judgments, one decision on the conduct of proceedings and the one decision by the Administrative Committee were appealed to the Federal Supreme Court (the period for filing an appeal is still running for two substantive judgments). In the reporting year, the Federal Supreme Court heard five appeals against decisions by the Federal Patent Court. It rejected four appeals and dismissed one appeal as inadmissible. At the end of the reporting year, two appeals were still pending.

The Federal Patent Court heard five summary proceedings (three in the previous year), adjudicating in two (one in the previous year) and dismissing three for irrelevance (two in the previous year). In one substantive judgment, the period for filing an appeal is still ongoing.

Languages

During the reporting year, in sixteen ordinary proceedings submitted to the

Federal Patent Court the language of the proceedings was German, and in two it was French. As for the summary proceedings, the language of proceedings was German in seven cases, and French in two. No proceedings, summary or ordinary, were conducted in Italian. In six of the ordinary proceedings and two of the summary proceedings, the litigants mutually agreed to make use of their right to use English in their submissions and hearings before the Federal Patent Court instead of an official language. Of the 60 protective briefs overall, 23 were submitted in English. Parties clearly show great interest in pleading their cases in English. This can be explained by the fact that English is the working language used not just by many foreign companies involved in court cases here but also by the R&D and patent divisions of a number of Swiss companies, and that frequently the main state-of-the-art documents are also in English.

Non-permanent judges

The system of non-permanent judges with technical training continues to prove extremely effective. Combining the participation of qualified legal specialists and technical experts from the fields of expertise at issue, the panels dispose of a high level of competence enabling them to hear cases of significant technical complexity in a reasonable time frame and at an acceptable cost.

The number of cases in which the President has recused himself fell again, to just two cases at the end of the reporting year. One of those was initiated before the end of 2017 and can thus be expected to end soon.

Administrative office

The staff still comprises just two administrative employees (equivalent to 130% full-time posts) and two court clerks (equivalent to 100% of a full-time post). The second court clerk, whose main function is as court clerk in Division II of the Federal Administrative Court, is brought in on a case-by-case basis as required.

Premises

The office premises of the Federal Patent Court, like the hearing rooms that it shares with the Federal Administrative Court, serve their intended purpose and there is no need to modify the existing arrangement. In March 2021, the hearing rooms of the Federal Administrative Court were equipped with videoconferencing facilities; the Federal Patent Court has since made use of these and conducted hearings by videoconference in several instances.

When the Federal Patent Court needs to sit elsewhere than in St. Gallen, the cantons concerned provide the hearing rooms. In the reporting year, one main hearing was held in the courtroom of the Hôtel de Ville in Neuchâtel, and one in the courtroom of the cantonal court of Vaud in Lausanne. This was greatly appreciated by the parties, who were based in the French-speaking part of Switzerland.

Finances

The operating account of the Federal Patent Court shows a slight increase in costs to CHF 1,608,466 (previous year CHF 1,566,306). This is due to the com-

ensation of the counsel providing free legal representation, and to the court fees written off in a case where a party was granted legal aid. Given the higher number of cases handled, income, at CHF 895,256, was significantly above that of the previous year (CHF 796,605). The cost-coverage rate was 56%.

Thanks to the higher income in the reporting year, the shortfall to be covered by the Swiss Federal Institute of Intellectual Property (IPI) pursuant to Article 4 PatCA narrowed to CHF 713,209.70 (previous year CHF 769,700).

2021 Satisfaction survey

In September 2021, the Federal Patent Court sent the attorneys and patent attorneys having represented or assisted parties before the Court since 2017 a questionnaire surveying their satisfaction with the services of the Federal Patent Court. A total of 194 questionnaires were sent out, and 73 were returned completed.

Of the respondents, 90% were satisfied or very satisfied with the overall quality of the Court's services. By the same token, 95% of the respondents were satisfied or very satisfied with the courtesy and helpfulness of the Court in handling inquiries, and with the quality, reliability and expediency of the information provided.

Compared to the 2017 survey, a significantly higher percentage of respondents fully agreed with the statement that the Court's judgments are clearly and comprehensibly substantiated.

Most respondents deemed reasonable the length of time required to issue specialist judges' expert opinions. In ordinary proceedings, a larger share of respondents would like the specialist judges' expert opinions to be issued more

quickly. The disadvantage, if any, of bringing proceedings before the Federal Patent Court is the cost. On the other hand, most respondents do not consider the length of the proceedings a good reason to abstain from bringing action in Switzerland.

Conducting hearings by videoconference is welcomed provided all the parties agree. Conversely, a clear majority of respondents would not wish hearings to be conducted by videoconference against the will of one of the parties.

Impact of the Covid-19 pandemic

The Covid-19 pandemic continued to have limited impact on court business. Hearings were held in person observing the precautionary measures in place (social distancing, mandatory face masks, perspex screen dividers). At the same time, videoconferencing was offered for main hearings and was used by parties from other countries whose representatives could not attend in person owing to travel restrictions or quarantine requirements.

The risk of infection at the workplace is low at the St. Gallen courthouse since on a typical working day only three people are on the premises – non-permanent judges are only on-site on days when hearings are scheduled. Like the previous year, the spring Plenary Court session was held by videoconference. The autumn session was organised as a hybrid event in St. Gallen, with mandatory certificates for those attending in person.

Co-operation

The supervisory meetings with the Federal Supreme Court took place on 26 March in Lucerne and 24 September in St. Gallen and the support received by the Federal Patent Court was well-appreciated.

As in prior years, co-operation with the Federal Administrative Court at operational level was pleasant and smooth. Courtrooms at the Federal Administrative Court are experiencing high occupancy levels due to the number of internal meetings that must be accommodated in large rooms to comply with Covid protection measures. This means that it is sometimes difficult to find dates for hearings.

Statistics

Number and type of case

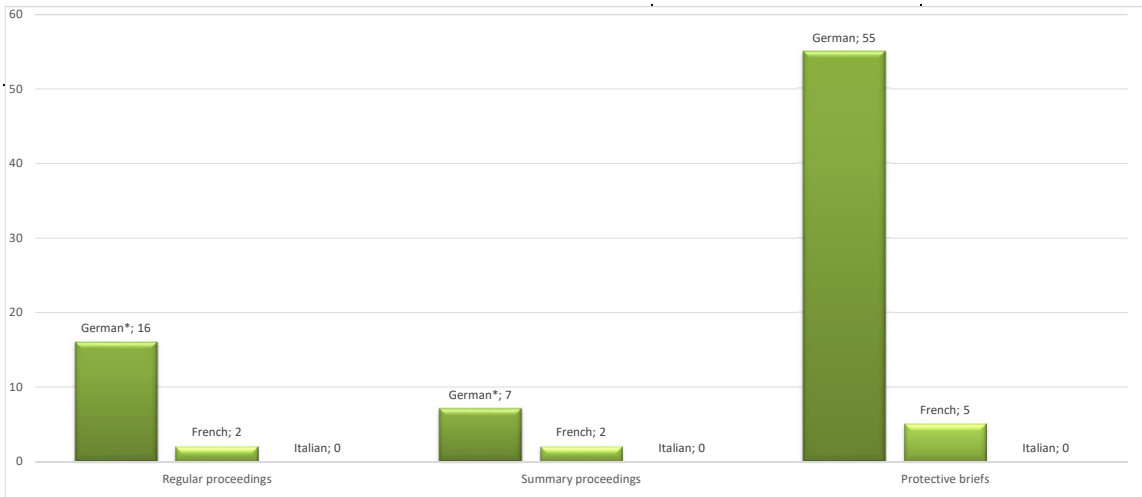
	Action taken				Outcome of proceedings			
	Cases still pending before 01.01.2021	Cases submitted to FPC in 2021	Cases settled	Cases still pending on 31.12.2021	Case settled by judgment	Case settled by compromise	Case declared inadmissible	Case dismissed for irrelevance *
Regular proceedings								
Infringement of patent without counter-claim of nullity of patent	13	7	7	13	5	1	0	1
Nullity of patent without counter-claim of infringement of patent	4	4	4	4	2	2	0	0
Infringement and nullity of patent	2	4	2	4	0	2	0	0
Right to a patent	2	1	1	2	1	0	0	0
Claim	3	1	3	1	0	2	0	1
Other	0	1	0	1	0	0	0	0
Total	24	18	17	25	8	7	0	2
Summary proceedings								
Injunction/safeguarding of interests	1	8	5	4	2	0	0	3
Description	0	0	0	0	0	0	0	0
Seizure	0	0	0	0	0	0	0	0
Evidence secured	0	0	0	0	0	0	0	0
Description and evidence secured	0	0	0	0	0	0	0	0
Other	0	1	0	1	0	0	0	0
Total	1	9	5	5	2	0	0	3

* including due to withdrawal of action or acknowledgement of action

	Transfer from 2020	Received in 2021	Period of protection expired	Relevant up to 2022
Protective briefs				
Swiss patents (incl. supplementary protection certificates)	3	5	6	2
European patents (incl. supplementary protection certificates)	33	56	53	35
Others (applications, other national patents)	1	0	1	0
Total*	36	60	58	37

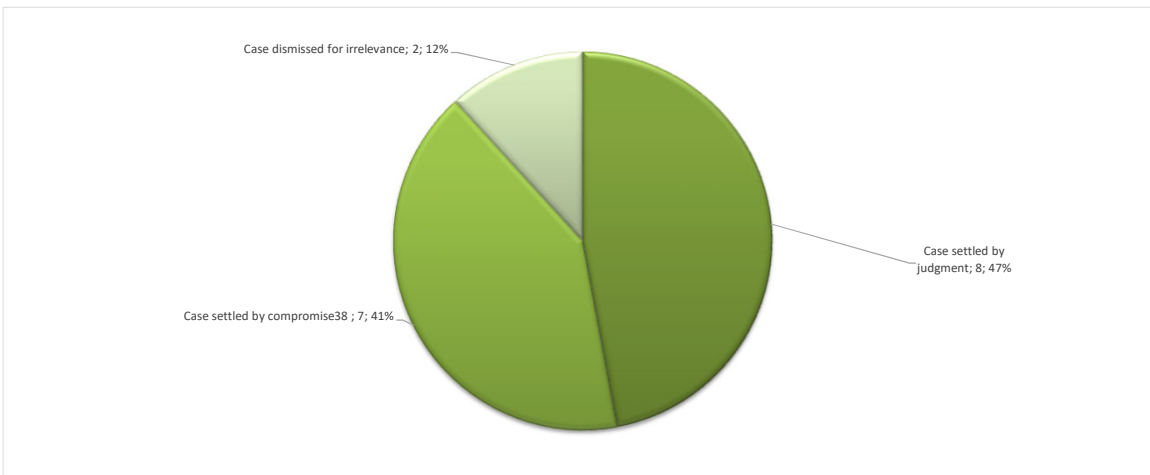
* in some cases, European and Swiss patents in same protective letter

Cases by language of proceedings in 2021



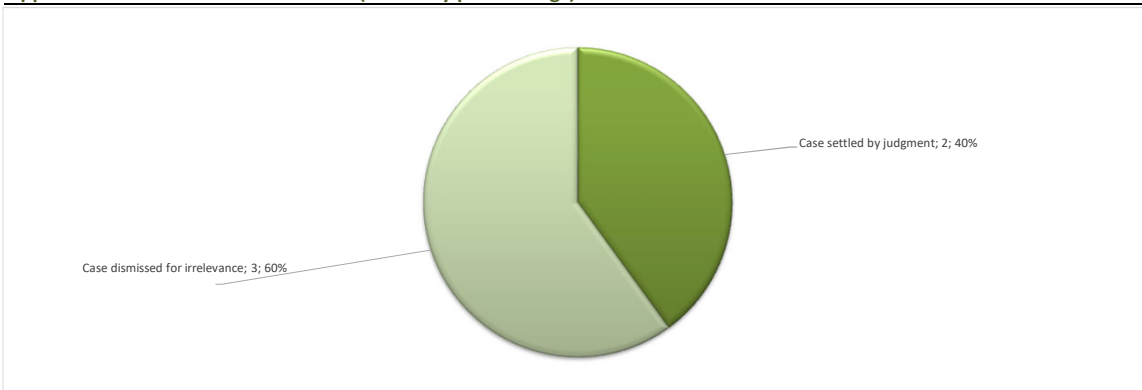
*including 8 cases where English was used during proceedings (6 regular proceedings, 2 summary proceedings)

Approach used to settle cases in 2021 (regular proceedings)



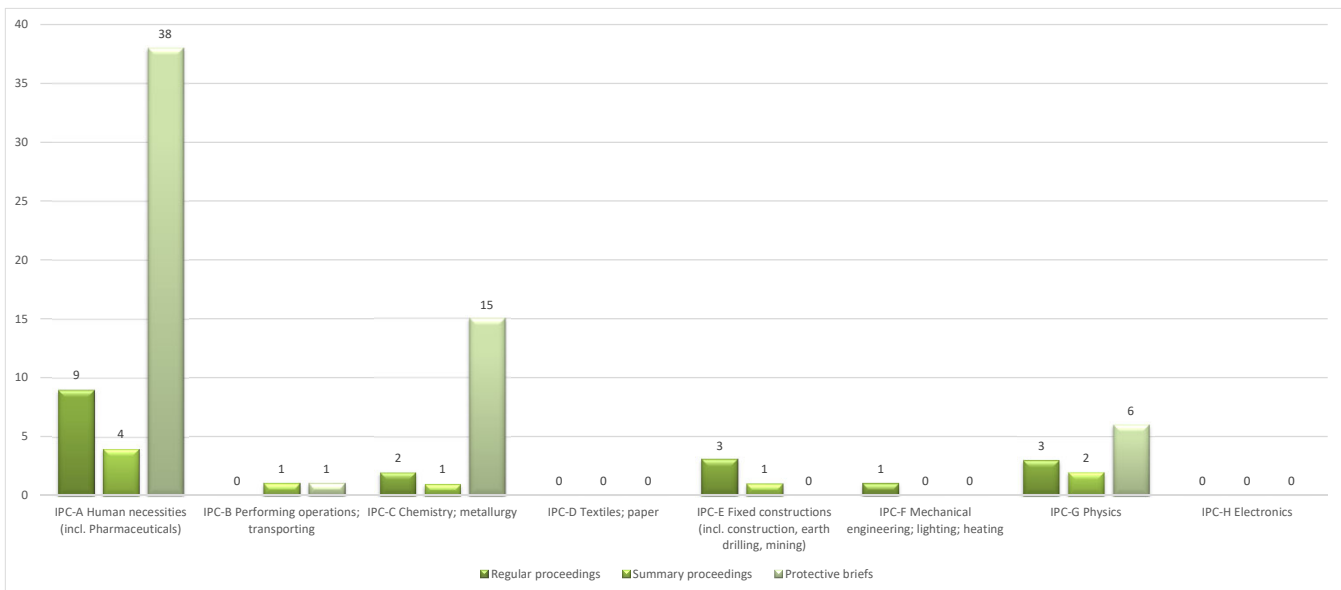
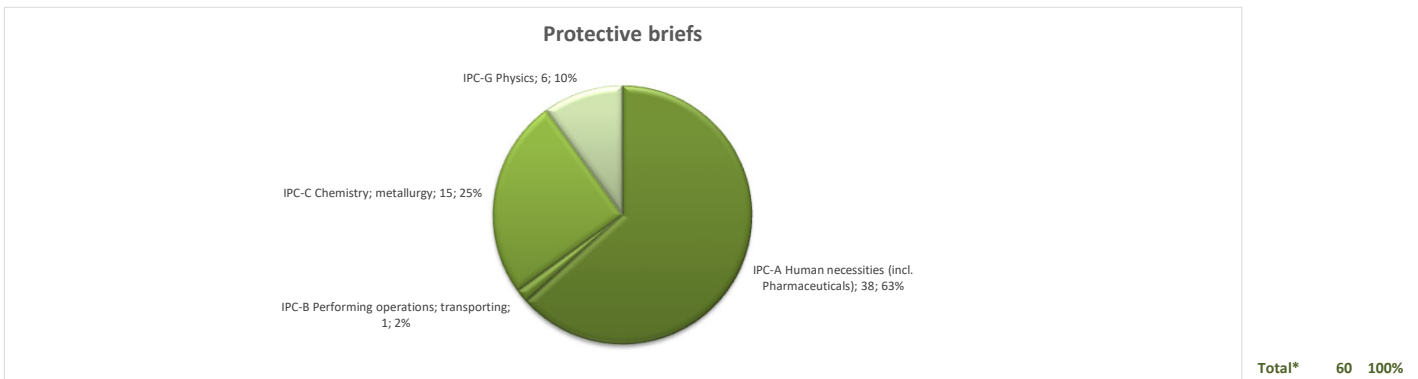
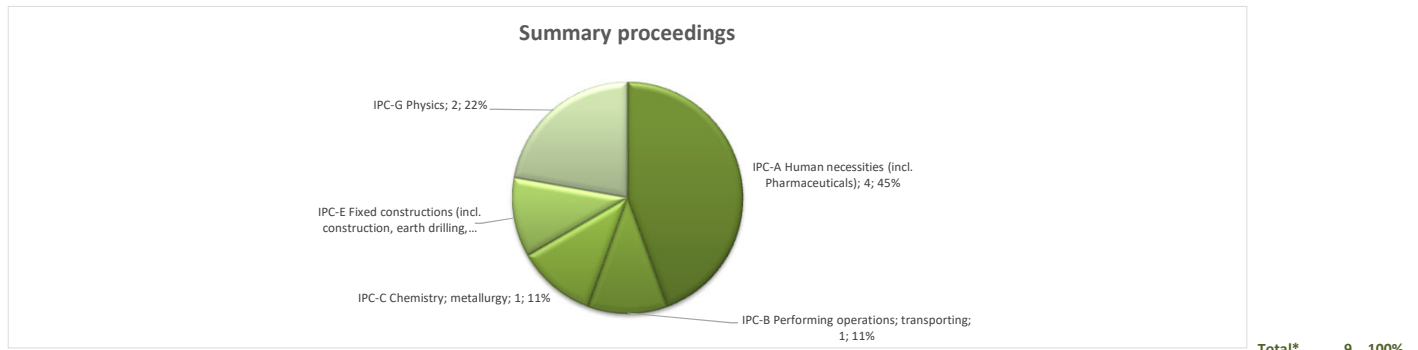
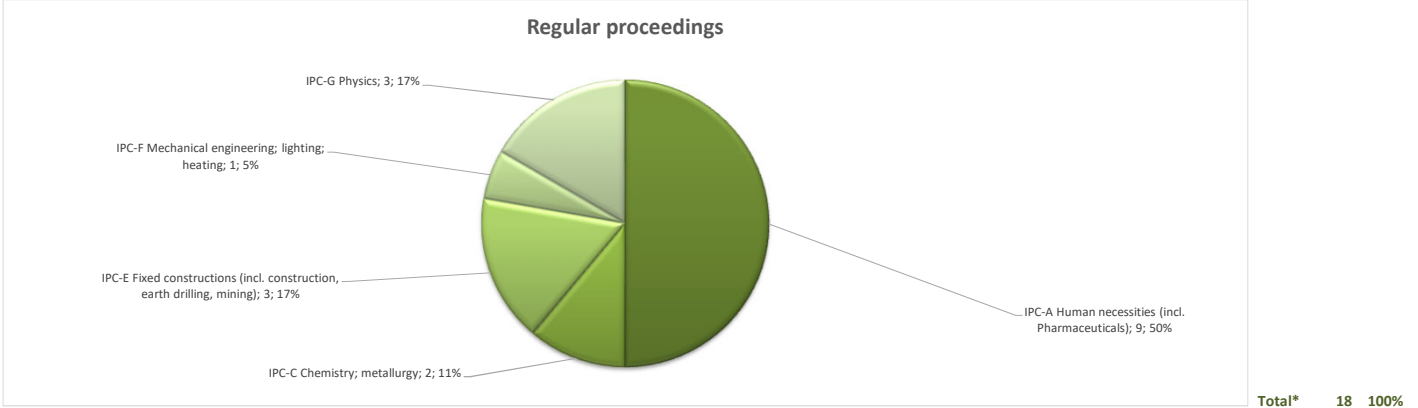
Total 17 100%

Approach used to settle cases in 2021 (summary proceedings)



Total 5 100%

Cases by technical field

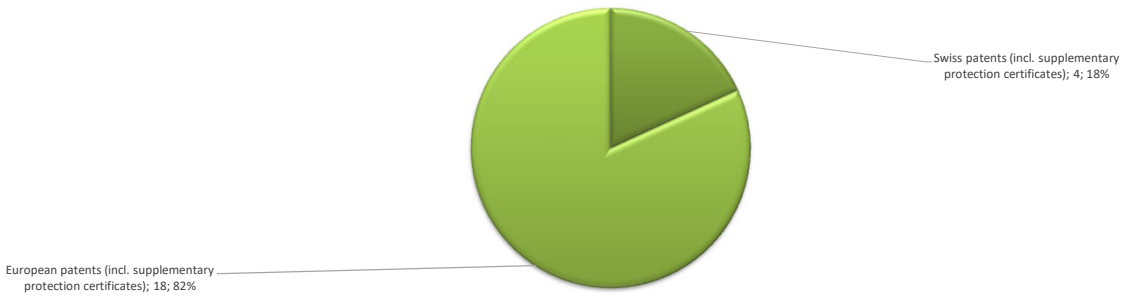


IPC = International Patent Classification

* some cases related to several technical fields simultaneously

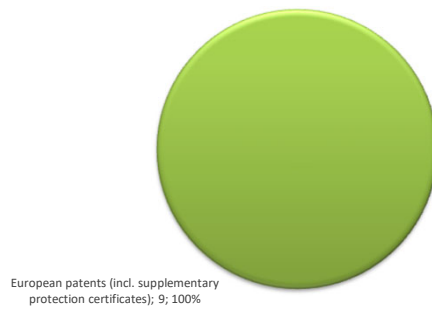
Cases by intellectual property rights

Regular proceedings



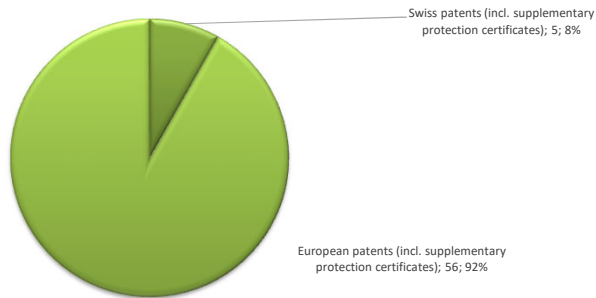
Total* 18 100%

Summary proceedings

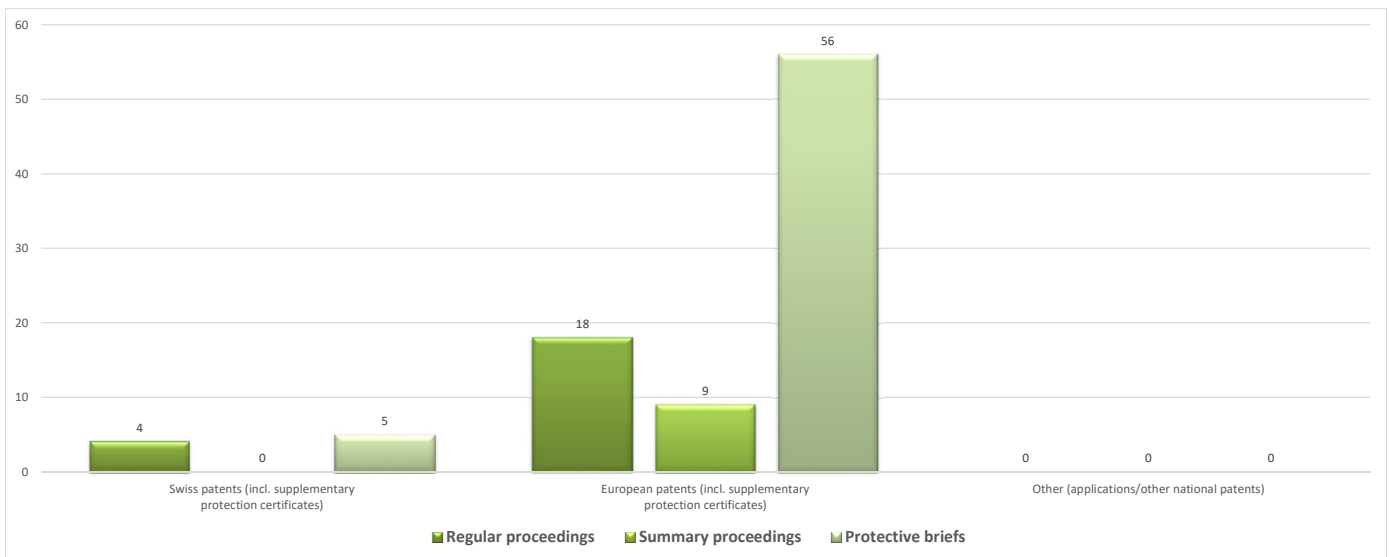


Total* 9 100%

Protective briefs



Total* 60 100%



* some cases related to both a Swiss and European and/or other patent

Duration of cases

	Cases settled						Cases still pending					
	1 to 3 months	4 to 6 months	7 to 12 months	1 to 2 years	over 2 years	Total cases settled in 2021	1 to 3 months	4 to 6 months	7 to 12 months	1 to 2 years	over 2 years	Total cases still pending at the end of 2021
Regular proceedings												
Infringement of patent without counter-claim of nullity of patent	0	1	0	4	2	7	5	2	0	5	1	13
Nullity of patent without counter-claim of infringement of patent	0	0	1	2	1	4	1	2	1	0	0	4
Infringement and nullity of patent	0	0	2	0	0	2	0	1	2	1	0	4
Right to a patent	0	0	0	1	0	1	1	0	0	0	1	2
Claim	1	0	2	0	0	3	0	0	0	1	0	1
Other	0	0	0	0	0	0	1	0	0	0	0	1
Total	1	1	5	7	3	17	8	5	3	7	2	25
Summary proceedings												
Injunction/safeguarding of interests	1	2	2	0	0	5	3	1	0	0	0	4
Description	0	0	0	0	0	0	0	0	0	0	0	0
Seizure	0	0	0	0	0	0	0	0	0	0	0	0
Evidence secured	0	0	0	0	0	0	0	0	0	0	0	0
Description and evidence secured	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	1	0	0	0	0	1
Total	1	2	2	0	0	5	4	1	0	0	0	5

Average duration of cases

	Cases settled		Cases still pending	
	Average duration (days)		Average duration (days)	
Regular proceedings				
Infringement of patent without counter-claim of nullity of patent		625		318
Nullity of patent without counter-claim of infringement of patent		611		157
Infringement and nullity of patent		257		292
Right to a patent		408		570
Claim		236		373
Other		0		50
Average		497		300
Summary proceedings				
Injunction/safeguarding of interests		151		90
Description		0		0
Seizure		0		0
Evidence secured		0		0
Description and evidence secured		0		0
Other		0		39
Average		151		80

Approach used to settle case (panel of judges/decision)

	Single judge	Three-member panel	Five-member panel	Seven-member panel	Total	Instruction hearings	Hearings in relation to preliminary measures	Main hearings	Total hearings
Regular proceedings									
Infringement of patent without counter-claim of nullity of patent	2	4	1	0	7	5		6	11
Nullity of patent without counter-claim of infringement of patent	2	2	0	0	4	3		1	4
Infringement and nullity of patent	2	0	0	0	2	1		0	1
Right to a patent	0	1	0	0	1	0		2	2
Claim	3	0	0	0	3	3		1	4
Other	0	0	0	0	0	0		0	0
Total	9	7	1	0	17	12		10	22
Summary proceedings									
Injunction/safeguarding of interests	4	1	0	0	5		1		1
Description	0	0	0	0	0		0		0
Seizure	0	0	0	0	0		0		0
Evidence secured	0	0	0	0	0		0		0
Description and evidence secured	0	0	0	0	0		0		0
Other	0	0	0	0	0		0		0
Total	4	1	0	0	5		1		1
Overall total	13	8	1	0	22	12	1	10	23

issued by

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