

Annual Report 2019

Federal Patent Court

Executive Summary

The number of incoming cases fell compared to the previous year to 21 (29 in the previous year). The number of ordinary proceedings decreased (13, 22 in the previous year), while the number of summary proceedings remained virtually unchanged (8, 7 in the previous year).

During the reporting year, the Federal Patent Court handled 30 ordinary proceedings, of which seven were settled and 15 terminated by judgment. Eight proceedings were declared groundless. A total of ten summary proceedings were disposed of during the reporting year, of which one was settled, one was declared groundless and eight were terminated by judgment. The number of cases pending by the end of the year was practically halved due to the high number of cases settled and the simultaneous decline in incoming cases (21, 39 in the previous year).

Income rose to an all-time high of CHF 1,051,936 (CHF 965,741 in the previous year). This improved the Federal Patent Court's coverage ratio from 54.4% to an all-time high of 60% despite expenses remaining largely the same (CHF 1,753,918, CHF 1,776,342 in the previous year).

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Annual Report of the Federal Patent Court 2019

St. Gallen, 1 February 2020

Ms President

Distinguished members of the National Council and the Council of States

In keeping with article 3 paragraph 3 of the Patent Court Act, we hereby submit the present Annual Report covering our activities in 2019.

Please accept, Ms President, 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 Commission

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

By the end of 2019, 20 ordinary and no summary proceedings were pending at the Federal Patent Court (37 and 2 in the previous year).

The number of incoming cases decreased compared to the previous year to 21 (29 in the previous year). The number of ordinary proceedings declined (13, 22 in the previous year), while the number of summary proceedings remained virtually unchanged (8, 7 in the previous year). A clear reason for the decline cannot be identified. Due to the economic importance of summary proceedings (generally involving preliminary measures to prohibit the sale of a given product, mostly pharmaceuticals), these proceedings are handled with practically the same level of intensity as ordinary proceedings, which results in a correspondingly high processing workload for the court.

During the reporting year, the Federal Patent Court disposed of 30 ordinary proceedings (23 in the previous year), of which 7 were settled (5 in the previous year), 8 were declared groundless (13 in the previous year) and 15 were terminated by judgment (5 in the previous year). 7 out of 15 judgments were appealed to the Federal Supreme Court (for 3 judgments that were made in December, the period for appeal is still ongoing). One appeal was rejected, one was declared groundless by the Federal Supreme Court, and five are still pending. Of the two appeals against judgments in 2018 that the Federal Supreme Court decided on in the reporting year, one was approved and one was rejected.

A total of ten summary proceedings were disposed of during the reporting year (6 in the previous year), of which one was settled (2 in the previous year), eight were terminated by judgment (4 in the previous year) and one was declared

groundless. One judgment was appealed to the Federal Supreme Court and the appeal is still pending.

Non-permanent judges

The system of non-permanent judges with legal and technical training still proves to be extremely effective. The possibility of composing panels of qualified legal and technical experts from a given field ensures that these panels are highly competent and able to dispose of technically complex cases in an appropriate amount of time and at reasonable costs.

The President recused himself on numerous cases that were disposed of in the reporting year by judgment. Therefore, the compensation to the non-permanent judges who took over the management of the proceedings in these cases was around CHF 140,000 above the long-term average. The extraordinarily high number of cases terminated (40), of which 23 were disposed of by judgment, shows that the Court can cope well with the recusals. A steep decline in cases where the President has to recuse himself is anticipated for 2020.

Languages

During the reporting year, eleven of the ordinary proceedings submitted to the Federal Patent Court were handled in German, two cases in French. In the summary proceedings, German was used in six cases, French in two cases. There were no cases in Italian; however,

in one case the defendant used the Italian language. In four ordinary proceedings and three summary proceedings, litigants mutually agreed to invoke the legal right conferred upon them by the Federal Patent Court Act to use English in submissions and hearings instead of an official language of Switzerland. 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 prior art documents are also in English.

Administrative office

The staff continues to comprise two office employees (equivalent to a combined work week percentage of 130%) and two clerks (equivalent to a combined work week percentage of 100%). The second court clerk, whose main role is as court clerk in Division II of the Federal Administrative Court, is brought in on a case-by-case basis when required.

Premises

The office space of the Federal Patent Court, like the hearing rooms that the Federal Administrative Court shares with the Federal Patent Court, serve their intended purpose; there is no need to change the current arrangements.

When the Federal Patent Court needs to conduct proceedings away from St. Gallen, the cantons where the proceedings are to be held provide the hearing rooms. An instructional hearing and a main hearing were held in the courtroom of the Hôtel de Ville in Neuchâtel during the reporting year. This was greatly appreciated by the parties, who were based in the French-speaking part of Switzerland. Further instructional hearings also took place in Zurich.

Finances

The profit and loss statement of the Federal Patent Court shows stable expenditure of CHF 1,753,918 (previous year CHF 1,776,342) and an increased income (before payments from the Swiss Federal Institute of Intellectual Property) of CHF 1,051,936 (previous year CHF 965,741). The increased income is attributed to the numerous terminations of proceedings that led to increased income from court fees.

The remaining amount to be covered by the IPI according to Article 4 PatCA has been reduced to CHF 701,982, and is therefore around 13% lower than in the previous year (CHF 810,600). The Federal Patent Court's coverage ratio reached a record high of 60% (54.4% in the previous year). Since it is not to be expected that the number of terminations in 2020 will be as high as in the reporting year, a decrease in income from court fees and a correspondingly lower coverage ratio can be expected for 2020.

Investigation of the Parliamentary Control of the Administration into the distribution of work in the federal courts

On 17 June 2019, the President met Ms Marion Baud-Lavigne from the Parliamentary Control of the Administration to discuss the distribution of work in the Federal Patent Court. Ms Baud-Lavigne was provided with copies of the resources used. Specifically, these include a table that shows the professional qualifications of the non-permanent judges with technical training, as well as a regularly updated table that shows how often each judge has already been acting as judge.

Cooperation

The Federal Patent Court greatly appreciates the support that it received in supervisory meetings with the Federal Supreme Court in Lucerne on 1 April and in St. Gallen on 31 October. As in previous years, cooperation with the Federal Administrative Court went very smoothly at all levels.

Statistics

Number and type of case

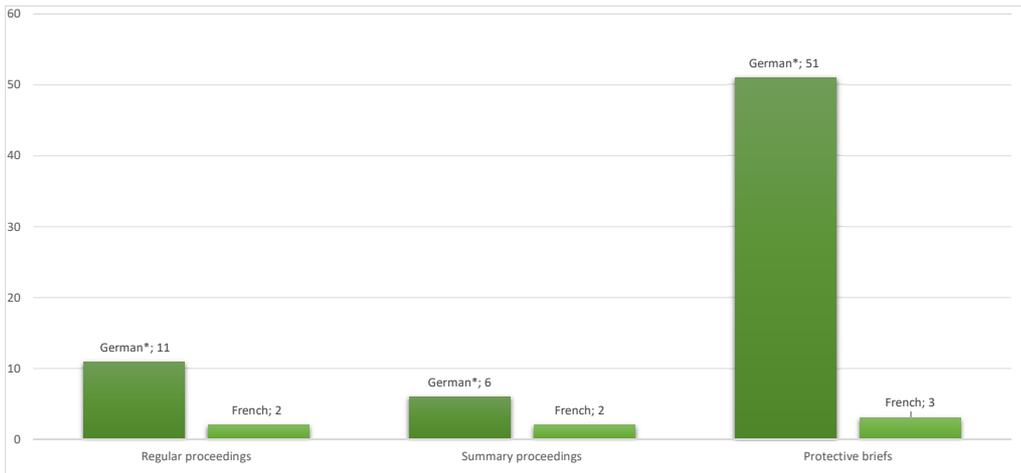
	Action taken				Outcome of proceedings			
	Cases still pending before 01.01.2019	Cases submitted to FPC in 2019	Cases settled	Cases still pending on 31.12.2019	Case terminated by judgment	Case settled by compromise	Case declared inadmissible	Case declared groundless *
Regular proceedings								
Infringement of patent without counter-claim of nullity of patent	15	7	12	10	5	4	0	3
Nullity of patent without counter-claim of infringement of patent	10	2	8	4	4	1	0	3
Infringement and nullity of patent	8	0	7	1	4	1	0	2
Right to a patent	2	3	2	3	1	1	0	0
Claim	0	0	0	0	0	0	0	0
Other	2	1	1	2	1	0	0	0
Total	37	13	30	20	15	7	0	8
Summary proceedings								
Injunction/safeguarding of interests	2	7	9	0	7	1	0	1
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	1	0	1	0	0	0
Total	2	8	10	0	8	1	0	1

* including due to withdrawal of action or acknowledgement of action

	Transfer from 2018	Received in 2019	Period of protection expired	Relevant up to 2020
Protective briefs				
Swiss patents (incl. supplementary protection certificates)	5	3	7	1
European patents (incl. supplementary protection certificates)	30	50	59	21
Others (applications, other national patents)	0	1	0	1
Total*	34	54	65	23

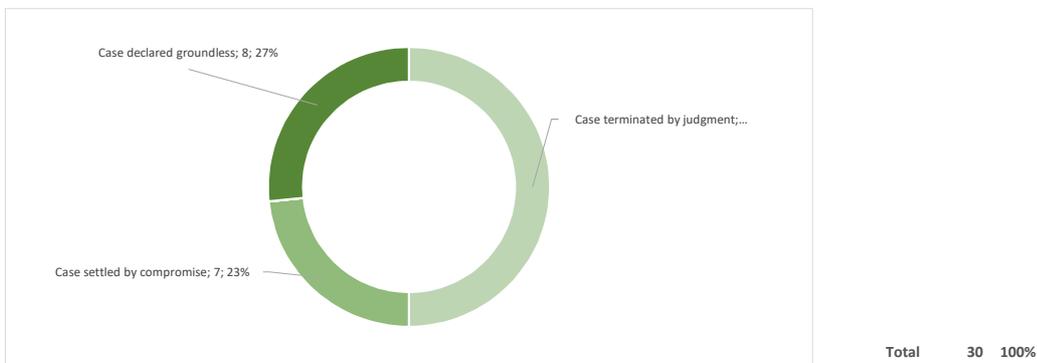
* in some cases, European and Swiss patents in same protective letter

Cases by language of proceedings in 2019

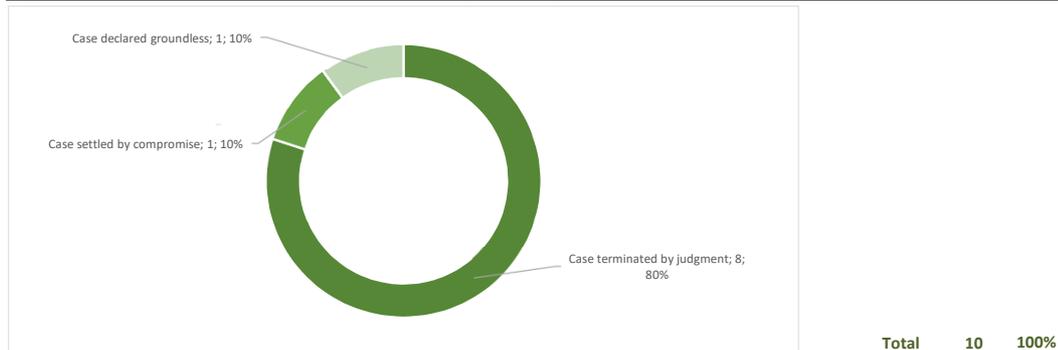


*including 23 cases where English was used during proceedings (4 ordinary proceeding, 3 summary proceedings, 16 protective briefs)

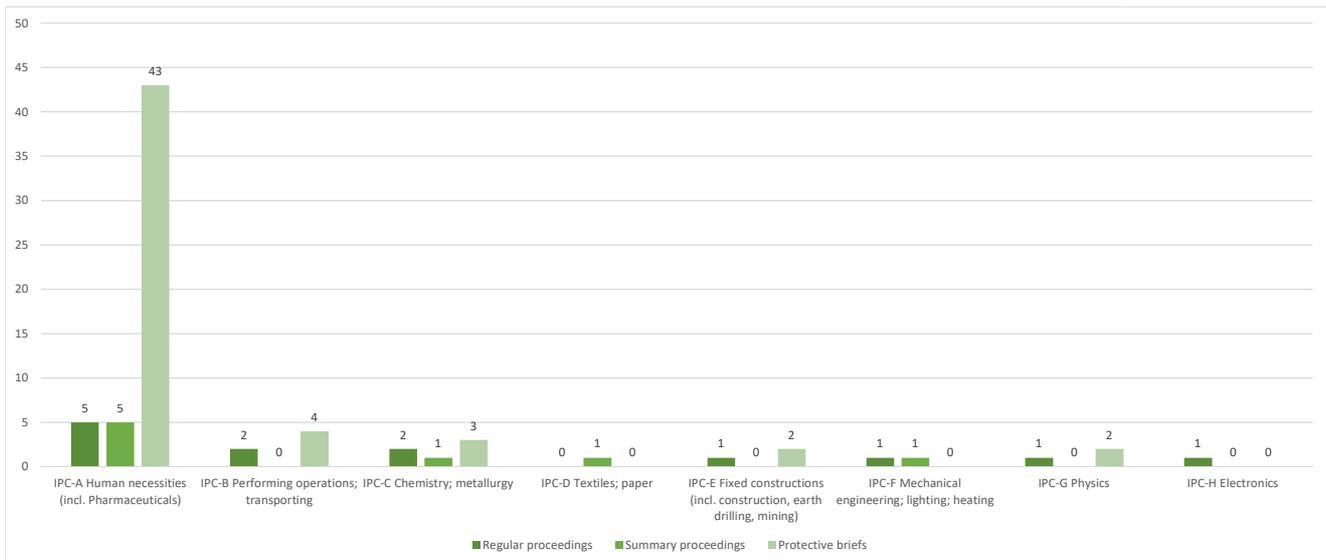
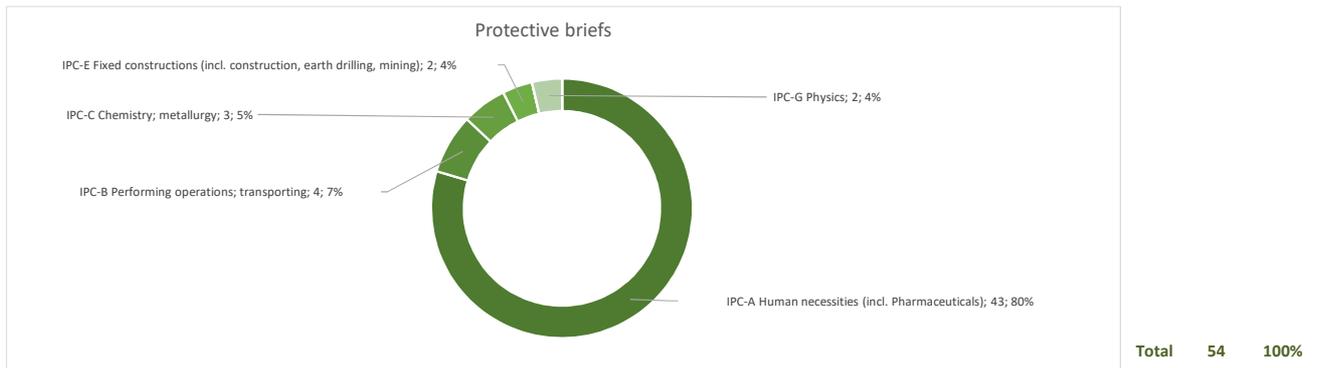
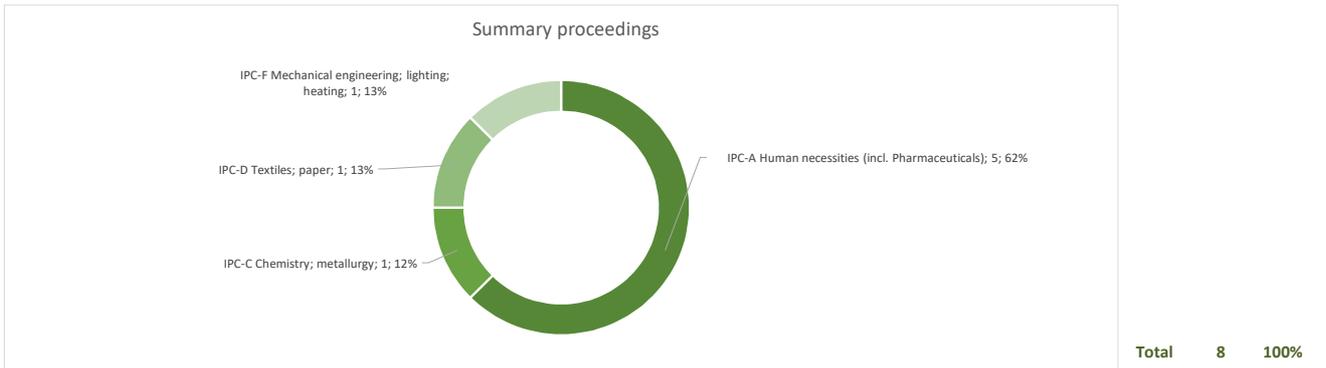
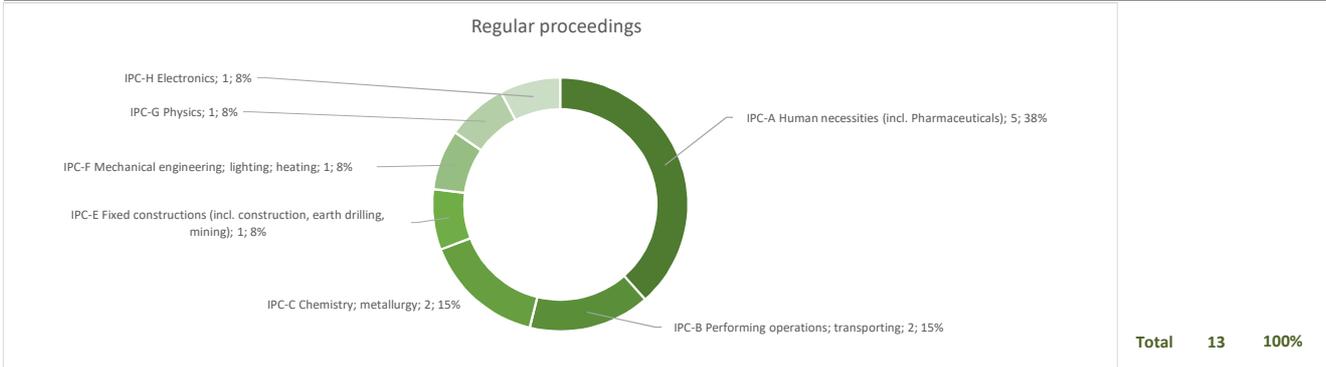
Approach used to settle cases in 2019 (regular proceedings)



Approach used to settle cases in 2019 (summary proceedings)

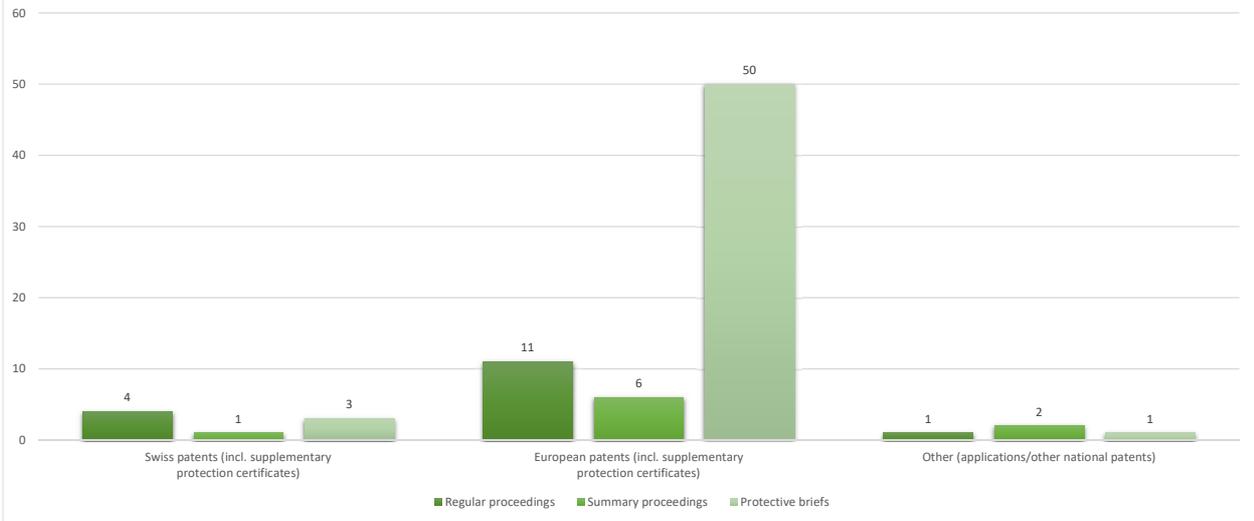
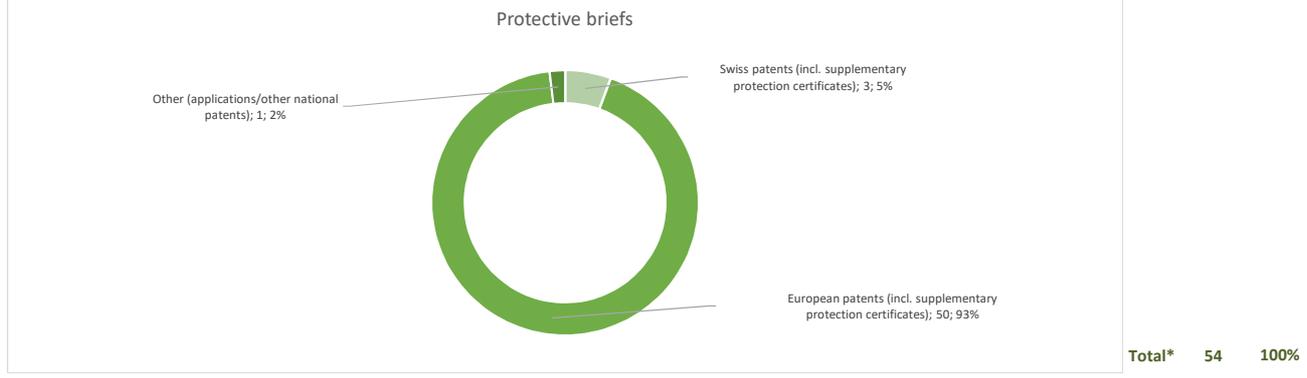
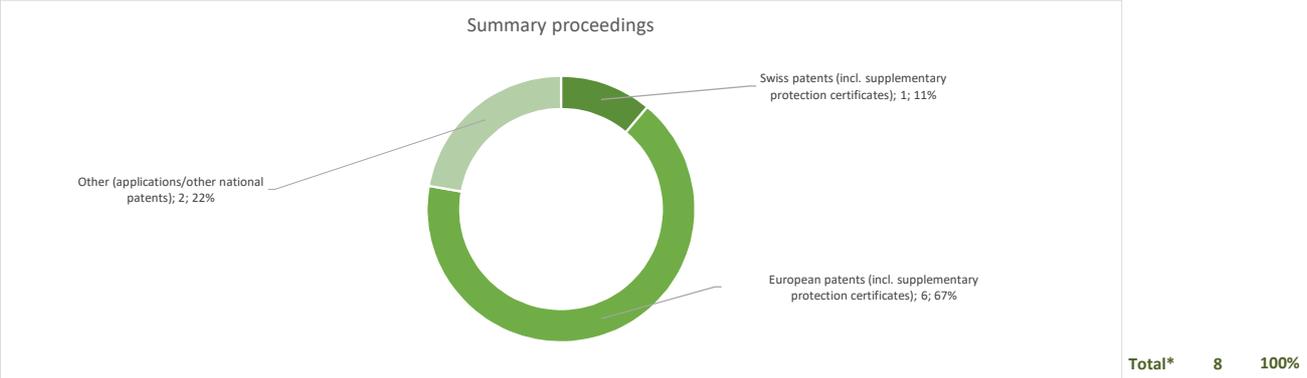
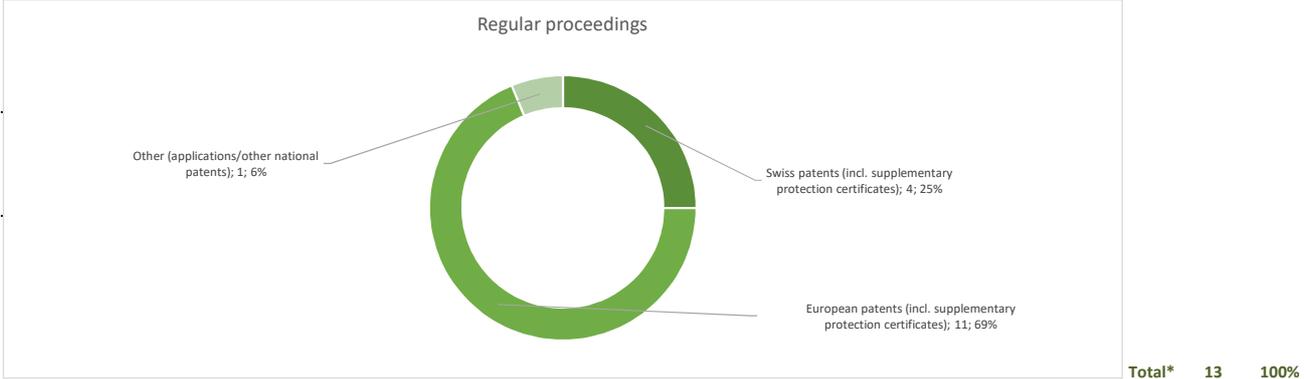


Cases by technical field



IPC = International Patent Classification

Cases by intellectual property rights



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

Duration of cases

	Cases terminated						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 2019	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 2019
Regular proceedings												
Infringement of patent without counter-claim of nullity of patent	1	2	4	2	3	12	1	2	3	2	2	10
Nullity of patent without counter-claim of infringement of patent	0	2	0	3	3	8	0	1	1	2	0	4
Infringement and nullity of patent	0	0	2	1	4	7	0	0	0	1	0	1
Right to a patent	0	0	1	0	1	2	1	0	1	1	0	3
Claim	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	1	0	0	1	0	1	0	0	1	2
Total	1	4	8	6	11	30	2	4	5	6	3	20
Summary proceedings												
Injunction/safeguarding of interests	5	3	1	0	0	9	0	0	0	0	0	0
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	1	0	0	0	1	0	0	0	0	0	0
Total	5	4	1	0	0	10	0	0	0	0	0	0

Average duration of cases

	Cases terminated	Cases still pending
	Average duration (days)	Average duration (days)
Regular proceedings		
Infringement of patent without counter-claim of nullity of patent	436	402
Nullity of patent without counter-claim of infringement of patent	639	390
Infringement and nullity of patent	689	684
Right to a patent	596	293
Claim	0	0
Other	363	604
Average	557	418
Summary proceedings		
Injunction/safeguarding of interests	105	0
Description	0	0
Seizure	0	0
Evidence secured	0	0
Description and evidence secured	0	0
Other	157	0
Average	110	0

Approach used to terminate 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	7	3	2	0	12	3		5	8
Nullity of patent without counter-claim of infringement of patent	4	4	0	0	8	2		5	7
Infringement and nullity of patent	3	4	0	0	7	1		3	4
Right to a patent	1	0	1	0	2	1		1	2
Claim	0	0	0	0	0	0		0	0
Other	0	0	1	0	1	0		0	0
Total	15	11	4	0	30	7		14	21
Summary proceedings									
Injunction/safeguarding of interests	6	3	0	0	9		4		4
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	1	0	0	0	1		0		0
Total	7	3	0	0	10		4		4
Overall total	22	14	4	0	40	7	4	14	25

issued by

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