

Annual Report 2020

Federal Patent Court

Executive Summary

At 22, the number of incoming cases remained virtually unchanged compared to the previous year (21 in the previous year). The number of ordinary proceedings increased (18, 13 in the previous year), while the number of summary proceedings decreased (4, 8 in the previous year).

During the reporting year, the Federal Patent Court handled 14 ordinary proceedings, of which two were settled and seven terminated by judgment. One set of proceedings was not admitted and four were declared groundless. A total of three summary proceedings were disposed of during the reporting year, of which one was terminated by judgment and two were declared groundless. The number of cases pending by the end of the year increased slightly (25, 21 in the previous year).

At CHF 796,605, income was down on the all-time high of the previous year (CHF 1,051,936) due to fewer cases being terminated. As expenses were also considerably lower (CHF 1,566,306, CHF 1,753,918 in the previous year), the coverage ratio is still a considerable 51% (all-time high of 60% in the previous year).

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Annual Report of the Federal Patent Court 2020

St. Gallen, 1 February 2021

Mr 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 2020.

Please accept, Mr 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 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 2020, 24 ordinary proceedings and one summary proceeding were pending at the Federal Patent Court (20 and 0 in the previous year).

At 22, the number of incoming cases remained virtually unchanged compared to the previous year (21 in the previous year). The number of ordinary proceedings increased (18, 13 in the previous year), while the number of summary proceedings decreased (4, 8 in the previous year).

During the reporting year, the Federal Patent Court disposed of 14 ordinary proceedings (30 in the previous year), of which 2 were settled (7 in the previous year), 4 were declared groundless (8 in the previous year), 7 were terminated by judgment (15 in the previous year) and 1 was not admitted (0 in the previous year). The Administrative Commission ruled on 1 request for a recusal. 7 substantive judgments and the decision by the Administrative Commission were appealed to the Federal Supreme Court (for 2 substantive judgments, the period for filing an appeal is still ongoing). In the reporting year, the Federal Patent Court handled 11 appeals against decisions by the Federal Patent Court, including 6 against decisions made in 2019. 8 appeals were rejected, 1 was approved, 1 case was sent back for further clarification and 1 appeal was declared groundless. 3 appeals were still pending at the end of the reporting year.

A total of 3 summary proceedings were disposed of in the reporting year (10 in the previous year), of which 1 was terminated by judgment (8 in the previous year) and 2 were declared groundless.

Non-permanent judges

The system of non-permanent judges with 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 number of cases in which the President recused himself fell further to just 4 by the end of the reporting year. 2 cases were received before the end of 2017 and are thus expected to be terminated soon. The President recused himself from one case received during the reporting year, which is related to one of the cases pending since 2017.

Languages

During the reporting year, all 18 of the ordinary proceedings submitted to the Federal Patent Court were handled in German. There were no cases in French or Italian. In summary proceedings, German was used in three cases and French in one case. There were no cases in Italian. In two ordinary proceedings and two 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. Of the 72 protective briefs, 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.

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 hearings are to be held provide the hearing rooms. Two instructional hearings 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.

Finances

The profit and loss statement of the Federal Patent Court shows expenditure down 11% to CHF 1,566,306 (previous year CHF 1,753,918). The fall in expenses is due to the lower number of cases terminated, fewer recusals on the part of the President and the fact that plenary sessions were cancelled or held virtually, all of which reduced the compensation paid to the non-permanent judges. At CHF 796,605, income was also down on the previous year due to fewer cases being terminated (previous year CHF 1,051,936). However, the previous year's figure had been an all-time high.

The remaining amount to be covered by the IPI according to Article 4 PatCA therefore stands at CHF 769,700 (previous year CHF 701,982). The increase in this amount can be attributed to a fall in the number of cases terminated compared to the record year of 2019, resulting in less income from court fees.

Effects of the Covid-19 pandemic

The Covid-19 pandemic had only a minor impact on court proceedings. No hearings were held during the first lockdown in spring 2020 and the extraordinary extension period for court vacations. In-person hearings have since resumed with protective measures in place (social distancing, face coverings, perspex screens). The Federal Patent Court rejected requests for instructional hearings to be broadcast abroad by video conference for participants who could not be present due to entry restrictions, making reference to the confidential nature of the settlement discussions.

The risk of infection in the workplace is low as only three people are present in the St. Gallen office on a typical working day – the non-permanent judges are only there on hearing days. The spring plenary session was cancelled. The autumn plenary session was held in a significantly slimmed-down format by video conference – this was possible because there was no elections tabulated.

Cooperation

The Federal Patent Court greatly appreciates the support that it received in supervisory meetings with the Federal Supreme Court via video conference on 3 April and in St. Gallen on 9 October.

As in previous years, cooperation with the Federal Administrative Court went very smoothly operative levels. In its discussions with the President and Executive Secretary of the Federal Administrative Court, the Federal Patent Court stressed that it would like to be involved in planning Federal Administrative Court projects that directly affect the Federal Patent Court early on. Above all, this concerns equipping the courtrooms which are mainly used by the Federal Patent Court and the business administration software for which the Federal Patent Court obtains IT services from the Federal Administrative Court in accordance with the service agreement.

Statistics

Number and type of case

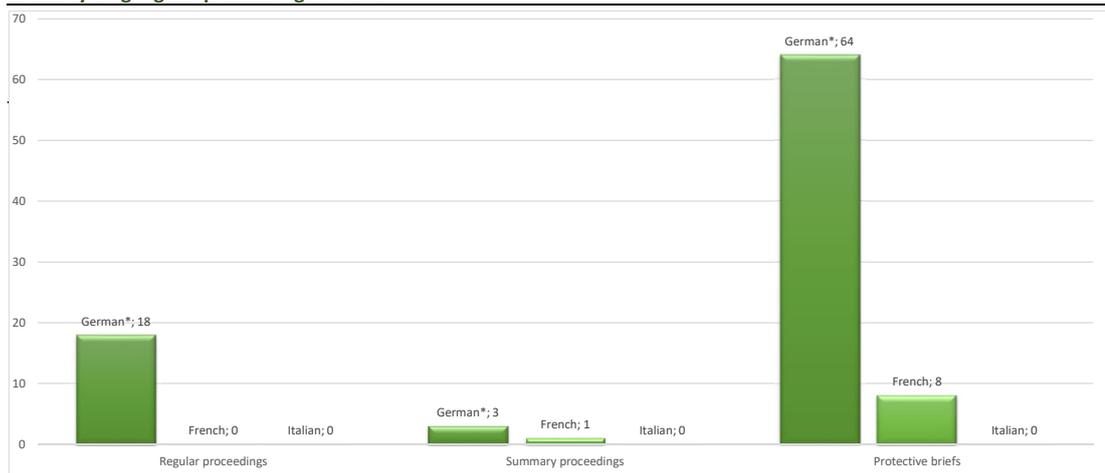
	Action taken				Outcome of proceedings			
	Cases still pending before 01.01.2020	Cases submitted to FPC in 2020	Cases settled	Cases still pending on 31.12.2020	Case settled by judgment	Case settled by compromise	Case declared inadmissible	Case declared groundless *
Regular proceedings								
Infringement of patent without counter-claim of nullity of patent	10	9	6	13	3	1	1	1
Nullity of patent without counter-claim of infringement of patent	4	3	3	4	2	0	0	1
Infringement and nullity of patent	1	2	1	2	1	0	0	0
Right to a patent	3	0	1	2	0	1	0	0
Claim	0	3	0	3	0	0	0	0
Other	2	1	3	0	1	0	0	2
Total	20	18	14	24	7	2	1	4
Summary proceedings								
Injunction/safeguarding of interests	0	1	0	1	0	0	0	0
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	3	3	0	1	0	0	2
Total	0	4	3	1	1	0	0	2

* including due to withdrawal of action or acknowledgement of action

	Transfer from 2019	Received in 2020	Period of protection expired	Relevant up to 2021
Protective briefs				
Swiss patents (incl. supplementary protection certificates)	1	7	5	3
European patents (incl. supplementary protection certificates)	21	65	53	32
Others (applications, other national patents)	1	1	1	1
Total*	23	72	59	35

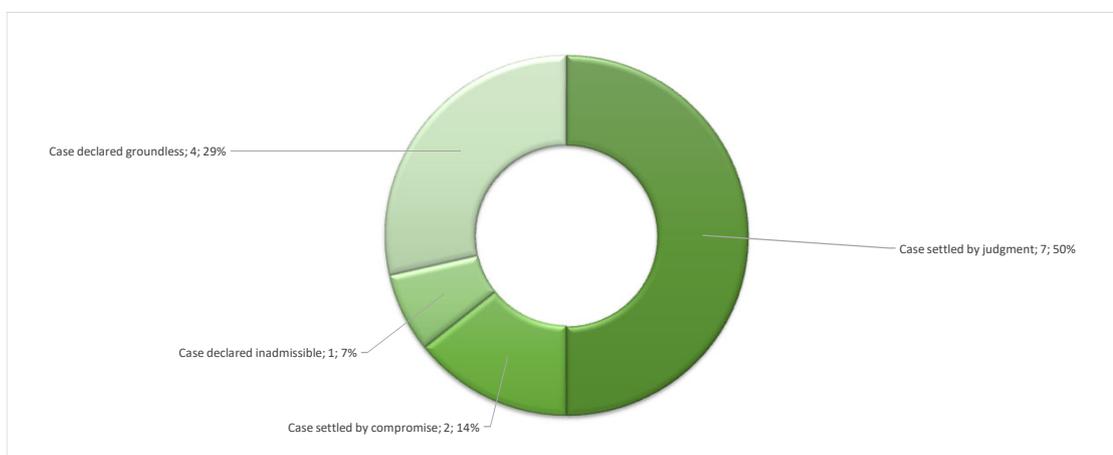
* in some cases, European and Swiss patents in same protective letter

Cases by language of proceedings in 2020



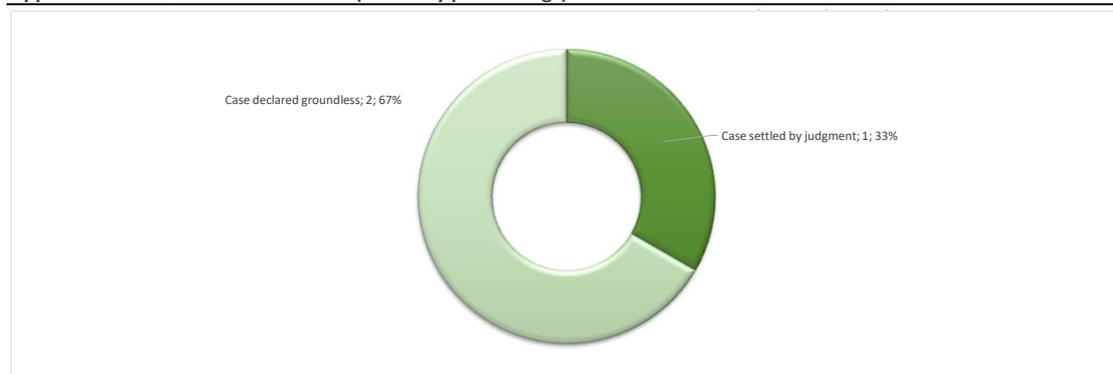
*including 27 cases where English was used during proceedings (2 regular proceedings, 2 summary proceedings and 23 protective briefs)

Approach used to settle cases in 2020 (regular proceedings)



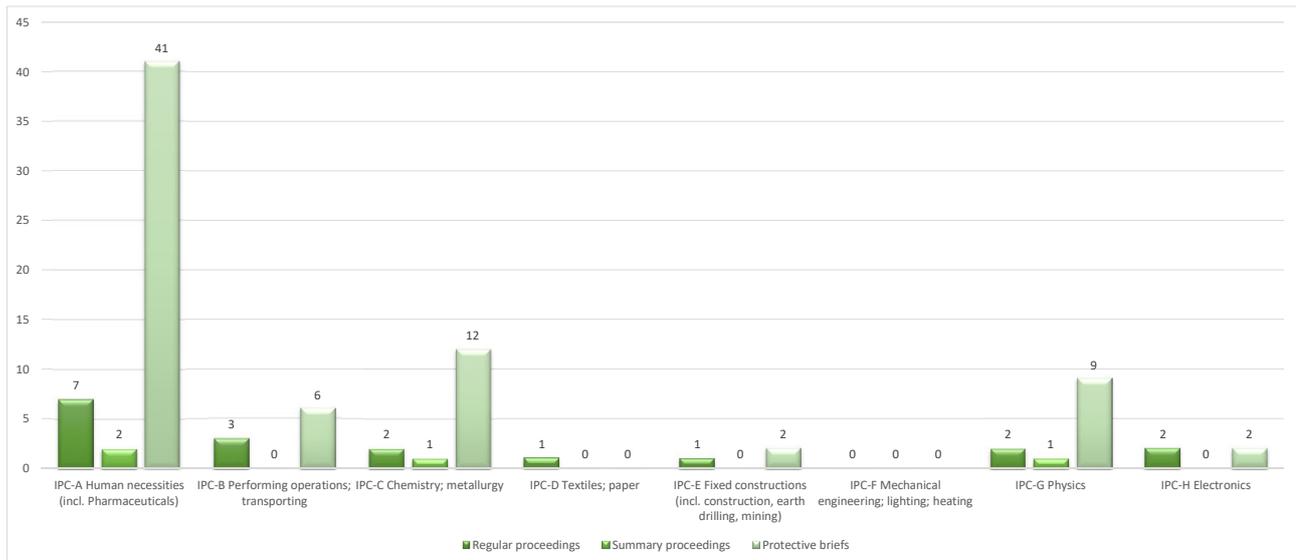
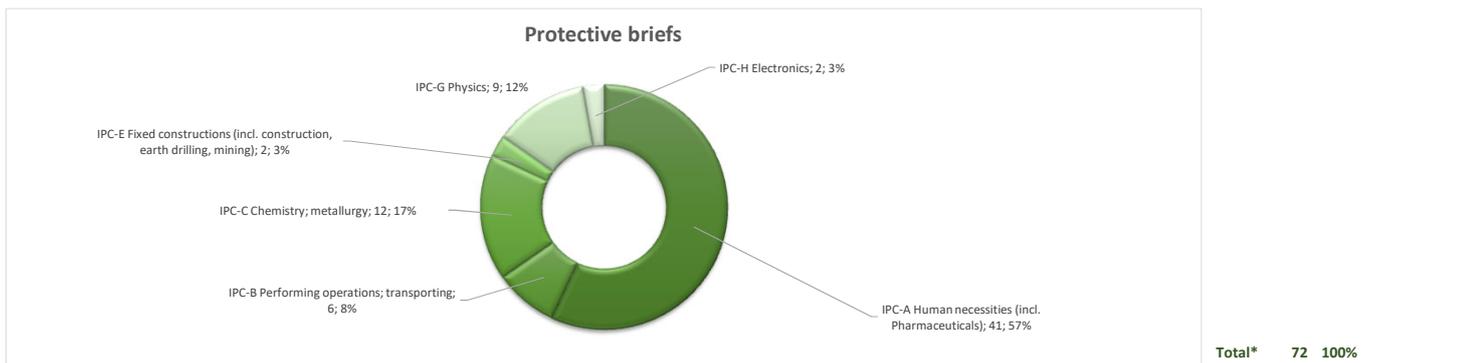
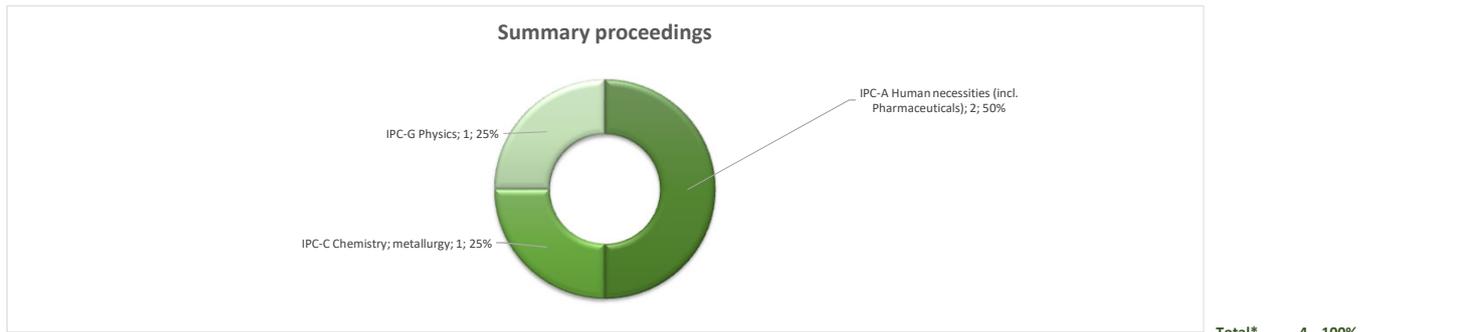
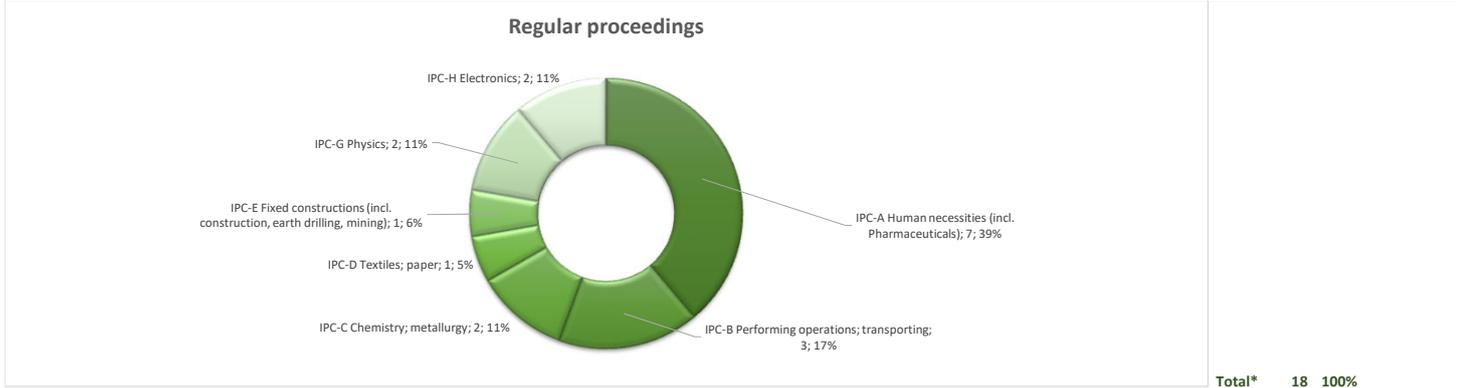
Total 14 100%

Approach used to settle cases in 2020 (summary proceedings)



Total 3 100%

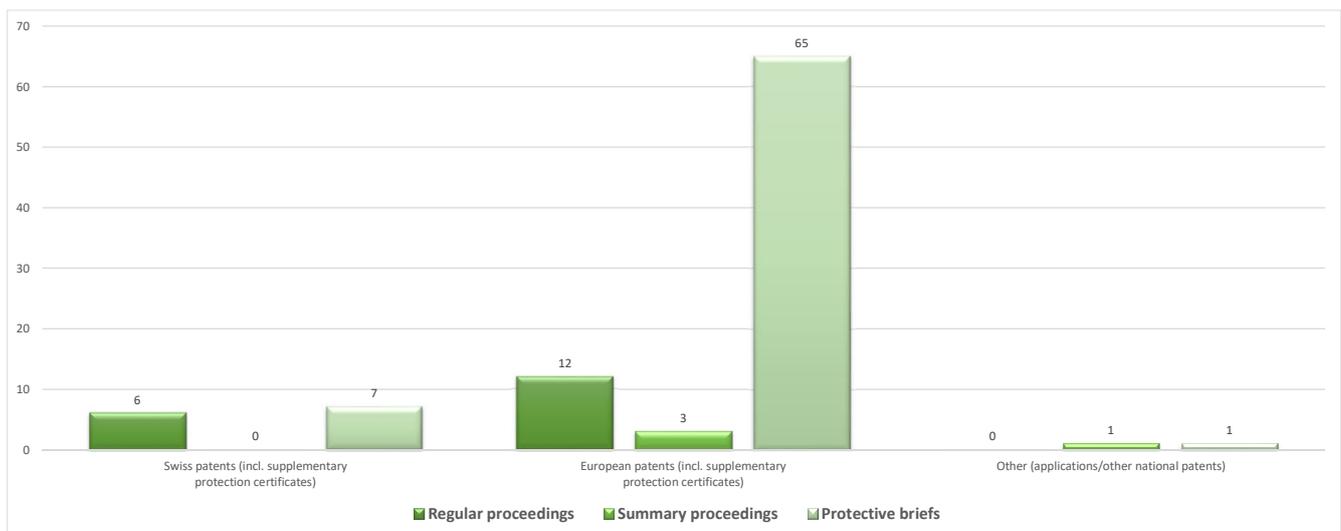
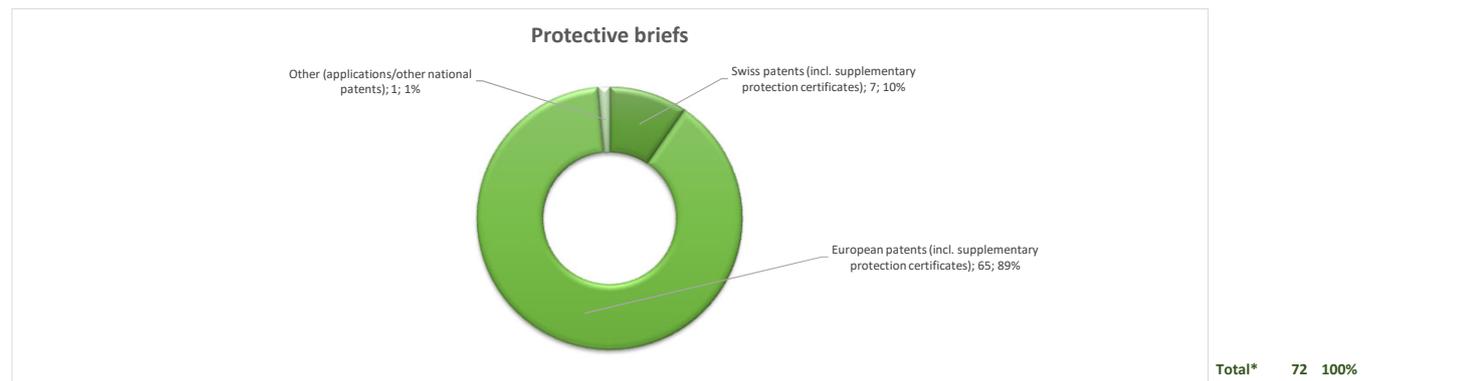
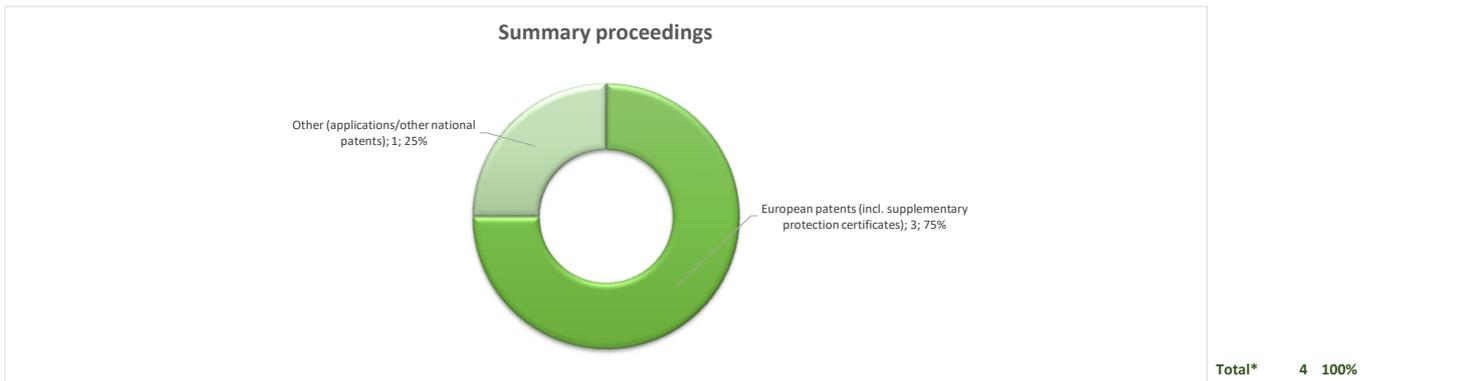
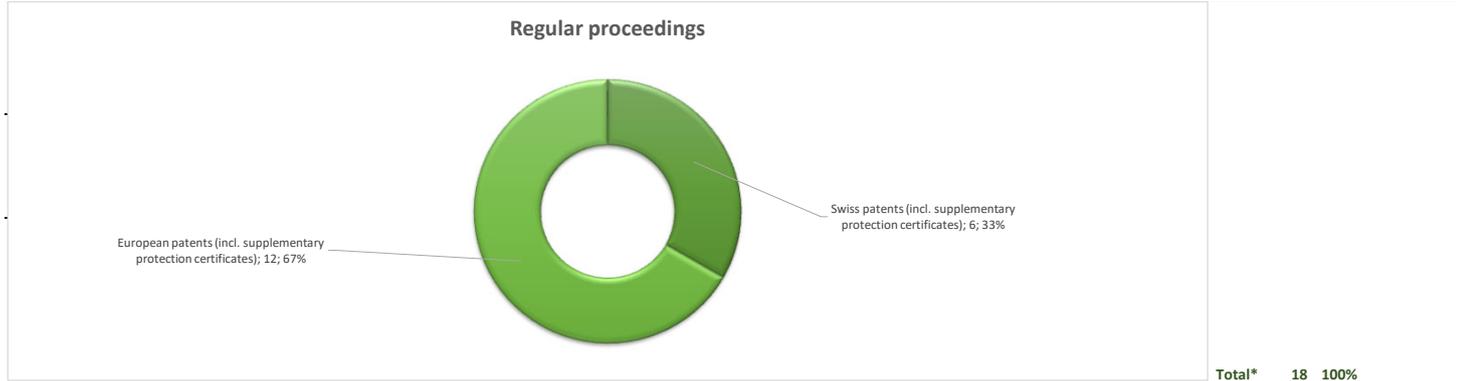
Cases by technical field



IPC = International Patent Classification

* some cases related to several technical fields simultaneously

Cases by intellectual property rights



* 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 2020	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 2020
Regular proceedings												
Infringement of patent without counter-claim of nullity of patent	1	0	1	2	2	6	2	2	4	3	2	13
Nullity of patent without counter-claim of infringement of patent	0	0	1	2	0	3	1	1	1	0	1	4
Infringement and nullity of patent	0	0	0	0	1	1	0	0	2	0	0	2
Right to a patent	0	0	0	1	0	1	0	0	1	1	0	2
Claim	0	0	0	0	0	0	1	2	0	0	0	3
Other	1	0	1	0	1	3	0	0	0	0	0	0
Total	2	0	3	5	4	14	4	5	8	4	3	24
Summary proceedings												
Injunction/safeguarding of interests	0	0	0	0	0	0	0	1	0	0	0	1
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	1	2	0	0	0	3	0	0	0	0	0	0
Total	1	2	0	0	0	3	0	1	0	0	0	1

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	571		400	
Nullity of patent without counter-claim of infringement of patent	478		380	
Infringement and nullity of patent	1033		237	
Right to a patent	456		511	
Claim	0		118	
Other	500		0	
Average	560		357	
Summary proceedings				
Injunction/safeguarding of interests	0		183	
Description	0		0	
Seizure	0		0	
Evidence secured	0		0	
Description and evidence secured	0		0	
Other	107		0	
Average	107		183	

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	3	2	0	0	5	6		3	9
Nullity of patent without counter-claim of infringement of patent	1	2	0	0	3	2		2	4
Infringement and nullity of patent	0	0	0	0	0	0		2	2
Right to a patent	1	0	0	0	1	1		1	2
Claim	0	0	0	0	0	0		0	0
Other	1	0	2	0	3	1		1	2
Total	6	4	2	0	12	10		9	19
Summary proceedings									
Injunction/safeguarding of interests	0	0	0	0	0		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	2	1	0	0	3		0		0
Total	2	1	0	0	3		1		1
Overall total	8	5	2	0	15	10	1	9	20

issued by

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